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**TRANSCRIPT  
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**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

Councilmember Mike Knapp, President  
Councilmember Phil Andrews  
Councilmember Roger Berliner  
Councilmember Marc Elrich  
Councilmember Valerie Ervin  
Councilmember Nancy Floreen  
Councilmember George Leventhal  
Councilmember Duchy Trachtenberg



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MIKE KNAPP: Good morning, everyone.  
Welcome to county council.

We will begin our morning with the invocation from Jennie Kellogg, Spiritual Assembly of the Baha'I of Montgomery County in Gaithersburg.

I would ask everyone to please rise and join us for the invocation.  
Jennie?

JENNIE Y. KELLOG: This gathering is turning to Thee.

These hearts are radiant with Thy love.

These minds and spirits are exhilarated by the message of Thy glad tidings.

Oh, God, let this American democracy become glorious in spiritual degrees, even as it has aspired to material degrees, and render this just government victorious.

Confirm this revered nation to upgrade the standard of the oneness of humanity, to promulgate the most great peace, to become thereby most glorious and praiseworthy among all the nations of the world.

Oh, God, this American nation is worthy of Thy favors, and is deserving of Thy mercy.  
Make it precious and near to Thee through Thy bounty Thou bestow.

MIKE KNAPP: Thank you very much

The general business, Ms. Lauer?

Announcements, acknowledgements, calendar changes, anything exciting?

LINDA LAUER: Actually, we have no changes to report, just a few petitions we received this week. One was opposing Bill 25-08 Emergency Medical Services Transport fee.

Another one supporting a peace resolution to end the Iraq war, and another supporting sub-urban hospitals-campus enhancement project.

That's it.

MIKE KNAPP: Okay, great.

Thank you very much.

Madam Clerk, are there minutes to approve?

CLERK: Yes, the minutes of June 19th and September 16th, 2008.

MIKE KNAPP: Is there a motion?

PHIL ANDREWS: I so move.

VALERIE ERVIN: Seconded.

MIKE KNAPP: Moved by Council Vice-President and seconded by Councilmember Ervin.  
Is there discussion on the minutes?

Seeing none, all in support indicate by raising your hand.



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That is unanimous among those present.

Thank you.

We now turn to the consent calendar.

Is there a motion?

VALERIE ERVIN: I so move.

DUCHY TRACHTENBERG: I second.

MIKE KNAPP: Moved by Councilmember Ervin; seconded by Councilmember Trachtenberg.

Is there a discussion on the consent calendar?

Just checking it quick.

I don't see any further--oh, there you go, Councilmember Leventhal?

GEORGE L. LEVENTHAL: Very quickly, I just wanted to thank the Department of Environmental Protection for its effort to update the regulations on the Clean Energy Rewards Program.

I'm optimistic that by passing these regulations, the county will promptly re-advertise the program and encourage Montgomery County home owners and businesses to enroll. You can get a discount on the price of getting Clean Energy in your home.

These regulations broaden the applicability of that program to energy--regard clean energy whether it's in our own air shed or National Clean Energy.

That actually makes it more cost-effective for the county to administer and has no--it has the same effect on greenhouse gas reductions.

So, this is a program that I encourage Montgomery residents to participate in and now it's available again thanks to these regulations and the work of the Department of Environment Protection.

MIKE KNAPP: Great. Thank you very much.  
Councilmember Floreen?

NANCY FLOREEN: Thank you, Mr. President.

I wanted just briefly comment on items H, I, and J.

I wanted to express my appreciation to Councilmember Berliner for taking you through the amendments to Ten-year Comprehensive Water Supply and Sewage Plan two weeks ago. And I just want to say in addition that the other amendments on the plan and the regulations will allow more flexibility for communities who want to join into the county trash hauling program. And I appreciate the attention of the County Executive to these issues because we certainly heard a lot from the community over the course of the past year as to some of their frustrations there. So, that's what items I and J achieved and I invite everyone's support.



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MIKE KNAPP: Great.

Thank you very much.

I see no further discussion on the consent calendar.

Seeing none, all in support indicate by raising your hand.

That is unanimous among those present.

Thank you.

We now turn to--right on time--work session on three elements.

We've started these two weeks ago.

We have two resolutions and then the Bill 36-07 on development districts.

During our discussion two weeks ago on the Development District legislation, there continue to be kind of going back to the impact on the Clarksburg issues.

And so, what I want to try to do is to bifurcate those issues so that we could talk about development districts kind of as a discrete project and as a tool moving forward.

And then have any kind of--any discussion people has as it relates to the Clarksburg development districts both proposed and those that have gone forward have that discussion as a Clarksburg discussion so we can kind of bifurcate those issues so we can actually focus attention on the development districts as a legislative issue.

I'm going to go a little bit backwards.

We have Item 4.1 which is introduction of a resolution to declare council intent regarding proposed Clarksburg Village and Clarksburg Skylark Development district which is sponsored by myself and Council members Elrich and Leventhal.

From my colleagues' perspective, you may recall that we actually have a Clarksburg Town Center Development District which has been formed.

Then we have these other two which have been proposed.

The challenge with the two that had been proposed is that they are--the council has not taken action to actually develop it, to create the districts but you have a community that is kind of wondering if there will be a developing District or not a development district.

And there's also the notion of a private developer, Development District fee for lack of a better word which is outstanding.

And so, this has been out there.

It's had kind of cloud for awhile which has actually been very disconcerting.

I get phone calls from residents and realtors and others probably at least a couple every few weeks trying to figure out what will happen in Clarksburg and if you're trying to sell a home or to buy a home, what will be the impact in that community?

And the answer is well, we don't know yet because the Council hasn't acted.

And so, we don't have the actual action for the Council.

If we're not going to proceed with those development districts, we need to do nothing.

Unfortunately, that doesn't give anybody any assurance as to what the real case is.

And so, I had a meeting last week with about 65 residents from the areas of the two development districts, of the two proposed development districts.

Recognizing that is not representative of everyone, but it was a good group that we had to get on a fairly short notice for me to talk to them about whether they would like to proceed with clarification of the Council's intent, whether or not to try and eliminate the proposed



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development districts and there was an overwhelming sense that that was the direction which they would like us to try and go so the Council can signal that we didn't want to do something.

And so, I have introduced that with Councilmember Elrich and Leventhal today, recognizing there are probably some issues that that will create as it relates to the private development districts, although the residents seem intent on trying to address that as a separate issue and wanted to try and bifurcate those for their own benefit.

And so, that's what's been introduced today.

And I guess the other point that I would just raise is as we start to have this discussion, given the economic downturns that we have seen over the course of the last, well, last couple of minutes, depending on what the market's doing, it would seem to me that there's probably--now is probably not the time that we as a Council as an elected body are going to proceed to impose increased taxes in any parts of our community.

And when we look at Clarksburg in particular where you have a market decrease in home values, one of the individuals that came up to me last week bought a home in Clarksburg a little over a year ago.

And then at the time and in the year that has gone by, his home value went from \$325,000 to \$225,000.

That is not an unusual case, unfortunately.

And so, you have many people sitting in homes that are upside-down as it relates to equity and are paying more for what the house is actually worth while we're having a discussion about whether or not we can potentially impose additional taxes.

And so, I think probably we would be unlikely to impose either of them at this point of time.

And I think to try and clarify for folks out there where we stand and what we're going to do, it would be helpful for us to be clear as to where we think we're going to go as a council.

Today, we're not going to take votes on either of these three.

It's to walk through any questions people have on the items in front of us.

And then, we will bring them all back next Tuesday for our final action.

And so, really, what I would do is first see if people have any questions on I guess just the resolutions because I think we can probably set them aside more readily and then go to the Development District bill and have the chair of the MFP Committee walk us through the Development District Bill.

And then, we can walk through all those pieces and get all those on the table as well.

So, I would just see if people have any questions or statements on the resolutions, and then turn to the bill itself.

Councilmember Leventhal?

GEORGE LEVENTHAL: I just want to thank the Council President for his work in this area.

The Council President is very--keeps in very close contact with his district and I'm in full support of his efforts here.



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I could not agree more strongly with the concern that he's articulated when individuals are worried about whether they're going to be able to retain their homes, that we should remove any cloud of uncertainty that has existed now for years.

That does affect the value of their home.

And so, I'm happy to co-sponsor both of his resolutions in this area.

I need not belabor the point because I completely agree with his remarks.

I still have reservations about the timing of our action on Bill 36-07, but the council will work its will on that.

I still don't feel a great sense of urgency about that measure; but I'm glad that we are proceeding with the two resolutions.

I think that that's an appropriate step at this time.

I understand the Council President stated that we won't vote this morning so I may have remarks again next week.

Council President Knapp

Okay, Councilmember Floreen.

NANCY FLOREEN: Thank you.

I was out ill two weeks ago when you had this conversation about the development districts, generally, although I watched it on cable.

And I do hope that the cable channel information is clearer than it was two weeks ago about to how the public can tune in.

It's not easy; but I listened with great interest and had a couple of questions and observations about all this.

You know, since, really, when I ran to be a member of this august body over six years ago, my concern had been and it continues to be the ability of the county to deliver on promises.

And I think we all share that view one way or the other; but the challenge, of course and it's really come home at this moment in time with the fiscal situation is, how do we deliver infrastructure in a fair fashion?

And we spend a lot--at least, I spend a lot of time thinking about this.

We commissioned a group to look at infrastructure funding for us last year and they came out with a report.

We implemented some of those elements in terms of increased transfer taxes, recordation taxes, this and that.

We increased impact fees quite significantly in response to that pressing need of delivering infrastructure.

And their last proposal on the table, which I have floated to universal disapproval frankly, is looking at a way to fund transit which is through a parking tax. So, we're thinking about that. I'm not going to push at this point but I think it's important to have the conversation.

For many years, the issue of how we fund infrastructure for various parts of the communities has been on this Council's table.



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And particularly, this was raised in an action by the Council in 1994 in the Clarksburg plan because everyone felt at that point, if we were going to have some place like Clarksburg, even then, given the fiscal situation which I think was, somewhat--they just came out of quite a downturn in the early '90s.

But looking to the future, they said at that point, if Clarksburg is going to go forward, it has to be financed by a Development District approach. Even then.

Now, there have been struggles to achieve that since that time.

Certainly, communities have grown. Decisions have been made. Administrative action has been taken, but nothing has been implemented with respect to an actual district structure.

And of course, we've had all the arguments for some time with people coming on board.

And this point not being resolved, I think it's a very fair point.

One question--reviewing the material, it struck--I read the material and was reminded that it's my--it's my understanding--Ms. Boucher is here in behalf of the County Executive.

The County Executive intends to proceed with these Development Districts.

Is this correct?

KATHLEEN BOUCHER: The County Executive has honored the process that it set out in County Law in terms of his role and has presented to the committee or to the Council, Executive Fiscal Reports for the two Development Districts that have not yet been created.

And along with that, has recommended that the Council modify the list of infrastructure that's funded by the Clarksburg Town Center Development District.

NANCY FLOREEN: No, but that's not my question.

That's not the answer to my question.

Does the County Executive intend to proceed with the Development District approach because this is an implementation issue?

KATHLEEN BOUCHER: The County Executive intends to proceed if the Council takes the steps necessary to authorize the County Executive to do that.

NANCY FLOREEN: So, that is the intention of the County Executive?

JENNIFER BARRETT: It's my understanding he's waiting for a signal.

He produced the Executive Fiscal Report as required for the other two Clarksburg districts.

Very shortly after he took off this, he directed us to move forward with that.

He's waiting for a signal from the Council on what they want to do on those two districts.

NANCY FLOREEN: Now, one of the issues generically and the community frustrations about all this is--now, people come in.

These homes had been sold.



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The market has changed as everyone knows and there continue to be concerns about well, what exactly is going to happen.

Why wasn't this implemented before homes were transferred to individual property owners?

JENNIFER BARRETT: We'll get into a rather complex discussion and we've had a lot of that with the MFP Committee as we've gone over the legislation; but you have to remember that Montgomery County takes an incredibly conservative approach to debt issuance. Doing these kinds of financing in other areas of the country is quite common; but we are very concerned that if we issue bonds with our names on them, even though these aren't secured by the County's full faith and credit.

They do have our names on and we don't want to default.

For that reason in taking that conservative approach, we want to make sure we understand exactly what the revenue stream will be to support the taxes and pay the debt service on the bonds.

And we've never been able to come to a final understanding because of the planning approvals for all these districts is continuing to move and we have yet to have final unit accounts and mix that would allow us to lock down what that revenue stream is, do the final sizing, come to you with that resolution to authorize the issuance of the bonds and move forward.

KATHLEEN BOUCHER: I guess I should just clarify that as the Council President indicated; the districts are in different states of creation.

Clarksburg Town Center Development District, you all--the Council, the previous Council passed the second resolution to create it.

So, it has been created under the County's Development District law.

The other two Clarksburg Development Districts have not been created yet, and so the executive would have no authority to issue--to even begin a process to issue bonds without the Council taking the second step on both of those districts in terms of a second resolution to create them.

NANCY FLOREEN: Right but it is the delay with respect to the implementation of the Development District, at least in this Clarksburg Town Center, associated with the plan of compliance issue?

JENNIFER BARRETT: There were times when--until things come to a final resolution, I couldn't market those bonds.

NANCY FLOREEN: Until things come to a final resolution.

Well, Montgomery County, that point is never clear.

Honestly, at what point will the County Executive issue the go-ahead and issue the bonds?





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JENNIFER BARRETT: Well, first, we need to send two resolutions authorizing approvals of the bonds.

NANCY FLOREEN: Right and then what point will that occur?  
I mean could it have occurred...?

JENNIFER BARRETT: When we can really lock down that sizing of the bond.  
We come to you with studying the expected tax rates, the size of the bond issues, many parts of the bond sizing and structuring process.  
And that's the uncertainty that we've had all along on the Town Center.

NANCY FLOREEN: And that's because the number of units approved in the Town Center has not been finally resolved, is that correct?  
I'm just trying to understand.  
Help me out.

KATHLEEN BOUCHER: Yes, yes, yes, yes.  
That's a huge--not just finally resolved, but as everyone here knows, that, that's not been a typical development process in Clarksburg Town Center Development District in the area.  
Clarksburg Town Center has been very messed up in terms of its development and we've yet to have it approved--we've yet to have amendments approved by the Planning Board, final amendments to the site plans and such that are needed in order for us to know that the number units and the mix of units.

NANCY FLOREEN: So, the final site plan approval documentation, would that be--if none of this was occurring at this point, is that the point at which the County Executive would feel confident in issuing the bonds?  
And then agreeing that there is certain paperwork associated with that?

JENNIFER BARRETT: And the market conditions.  
I mean--

KATHLEEN BOUCHER: The market conditions but that's--

NANCY FLOREEN: That's a struggle right now but sure--

KATHLEEN BOUCHER: Once it was locked in--

JENNIFER BARRETT: And I just want to go back that it wasn't some of these other things happening.  
We actually got together with the developers in November.



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I think it's either 2002, 2003.

And they had just simply had a change in ownership of the development.

They put a stop to the process first because they wanted to change how they're building out the Town Center area of the Town Center District.

And then things--the violations occurred and all the other things happened.

So, it started first by the developers putting a hold through the process and then everything fell apart after that.

NANCY FLOREEN: In 2003, Ms. Boucher?

JENNIFER BARRETT: I think I had Mr. Faden at the meeting.

We were all ready to go.

NANCY FLOREEN: Okay, because I think that the issue of community expectation, and as we look at other ways of financing things, the question of total, absolute certainty--there'll never be a change in anything, is a little is hard to--

JENNIFER BARRETT: And Councilmember Elrich put the challenge to me the last time we took this up to think about, how could we do this and not have that absolute certainty How could we start taxing earlier?

NANCY FLOREEN: Yeah.

JENNIFER BARRETT: And I've been thinking about that, and I think that's something we would have to work through--

NANCY FLOREEN: I mean as it is--as we do a budget, we identify tax rates. We apply taxes and we assume things will get better; basically, that there will be more homes built, that there will be more construction because that's the way that we get additional revenue.

>> When you're dealing with individual home owners, I think there's an expectancy that they want to know what that tax bill's going to be.

NANCY FLOREEN: That's fair.

JENNIFER BARRETT: You're doing mortgage financing so that's been a challenge with these residential development districts.

If you're doing something differently where you could just say, okay, I need this amount of revenue to afford this much infrastructure, we can always figure that out.

But that revenue will be extracted from the development, the per unit cost especially if its, you know, a multi-family kind of development or commercial development, they would go in with their eyes wide open knowing I need that revenue.



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How we get it spread amongst the mix would be determined--

NANCY FLOREEN: Well, you know, just thinking about financing in the long term, generally, you know last year, we had this conversation with respect to WSSC capital infrastructure. And I think the proposal was--and this Council uniformly supported it, basically a \$20, I think it was a \$20 a month charge to every single user of WSSC services to generate the resources necessary to fund certainly an evolving capital need. But you know, that kind of charge was certainly on our table, and we all embraced it. And under the circumstances--

MICHAEL KNAPP: Embrace may be overstated.

NANCY FLOREEN: Well, we've recognized that it was something we're trying because of the, you know, the real-life experiences that our people, our two counties have experienced.

And Prince George's County was as comfortable with that and so we're still talking about other ways to do that.

Those are, you know, important conversations to be had.

But we've been, you know, working through this for quite some time and I think it's important to think about this this way.

I think we need to get--figure out a way to add the right--provide the right community understanding of these things in the right context.

And certainly, there have been many trees felled advising us about the different community perspectives of that.

I've got--probably all of you have a file, a series of file folders full of these issues and we've talked about this and thought about this for a long, long time; but at the end of the day, there really are costs to making communities what they should be.

I was out in your district the other day, Mr. Knapp, and I was reminded by one of our joint constituents of the absence of rec centers in the upcounty.

And why aren't there any?

I said, well, yeah, these are issues.

These are problems

But given our overall fiscal situation right now, anything like that is going to way, way, way, way, way to the end of any line before we can deliver what this community surely desire and are entitled to.

Has anybody done any work on our residents' ad valorem tax responsibilities throughout the county?

There's some--we rarely look at that.

But throughout the county, it's my understanding that everyone really pays a different tax at the end of the day based on the special district that they might be in, the municipalities. People in those municipalities pay different--

JENNIFER BARRETT: Information is readily available--



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NANCY FLOREEN: Pardon me?

JENNIFER BARRETT: That information is readily available in the tax chart on county of the Department of Finance website that shows across the columns all the different rates that you pay in different tax classes.

NANCY FLOREEN: So, if we were to go forward with the Clarksburg District tax, additional Development District tax, how would that place Clarksburg residents vis-à-vis other residents of the county in terms of their overall ad valorem tax obligation? Adding in this and that, the other things because there are different districts. If you're in the lower part of the county, you pay different taxes. There's a regional district tax. There's a collection, rather astounding variety of different taxes that our residents pay at the end of day.

JENNIFER BARRETT: It would fall off somewhere about--too slightly above the middle of the chart but the distinction there is those different taxes you see, there's the Mass Transit Tax rate, the Fire District Tax, three, Park and Planning District taxes, Recreation District tax, Urban Districts Parking Lot District's, Storm and Water Management. Those are all related to services provided to the citizens that the citizens received. And by the way, it's also greatly affected by the Municipal Tax as levied by the municipalities within the county.

NANCY FLOREEN: Yeah.

JENNIFER BARRETT: Who also typically uses moneys to provide services to their citizen. Whereas, what we are talking about here is the tax that supports the infrastructure that doesn't distinguish one community from another but rather that everybody benefits from.

NANCY FLOREEN: But overall, it would place them in a point a little above midway with respect to the overall tax rate that residents throughout the county experience.

KATHLEEN BOUCHER: I would add to that that the Executives' fiscal report that he sent over on the two Development Districts that have not been created yet included some recommendations about modifying the infrastructure list that's to be funded by the Clarksburg Town Center Development Districts to reduce that tax burden in order to make it a more reasonable tax burden.

NANCY FLOREEN: So, if we did what the County Executive proposed, that might put the overall burden on Clarksburg residents more than halfway vis-à-vis other residents.



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JENNIFER BARRETT: But it's not addressing the fairness issue in terms of what the tax pays for.

NANCY FLOREEN: Well, right.  
But I mean in terms of the burden that they're looking at, it would be--you're saying about midway.

JENNIFER BARRETT: Probably about midway.

NANCY FLOREEN: Based on what the County Executive has proposed.  
Okay, thank you.  
Those are my questions.

MIKE KNAPP: Councilmember Elrich.

ROGER BERLINER: Is it my turn?

MIKE KNAPP: Wait a few leaves.  
We'd call upon you.

ROGER BERLINER: Thank you, Council President.

MIKE KNAPP: Turn your mic.  
There you go.

ROGER BERLINER: It's been so long.  
I am increasingly comfortable with pulling the plug on all three of these development districts. Obviously, as Kathleen observed, they are very different.  
The first one is the one that is the most difficult for all of us to grapple with in part because, I believe your great phrase was it was so messed up, that technical phrase.  
The issue that I always had with respect to the first development district, beyond the notice issues and all of these sets of issues was that people, the development community could have in good faith proceeded forth to make investments in a "reliance context." That is perceiving that the county had made a commitment that they would be paid from development districts for this work.  
So, my question to Mr. Faden is that, my understanding is that--let's say for purposes of this conversation that the Development Community had gone forth and invested something on the order of \$5 million in infrastructure.  
I'm advised that if the Development District does not go forward, if we pull the plug on it, as I suspect we will, that they would then be eligible for credits against taxes that they would otherwise have been eligible for, but for the Development District.  
Is that understanding correct?



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MICHAEL FADEN: That's generally correct.

They would be eligible for Impact Tax credits for some of the transportation work that they did, if it was creditable under the standards for the Impact Tax; in other words, if it adds transportation capacity.

I don't believe that covers all of the expenditures they made.

ROGER BERLINER: Do we have an idea as to what percentage of the expenditures, or is that an issue of some debate as to what's covered and what isn't covered?

MICHAEL FADEN: We have been working with the DOT and my colleague Glenn Orlin can give you more details if you need it as to determine what ultimately DOT's call as to its specific project whether it's creditable or not.

So, we've been working with them to determine on a couple of other projects whether they would be creditable.

ROGER BERLINER: My only observation with my colleague is I think it's going to be important for this legislation to affirmatively embrace whatever the Executive ultimately deems to have been appropriate that we permit them to recover the dollars that they otherwise would have been able to recover but for the Development District because I do believe that that will ensure recovery of a significant portion of the outlays that were made with respect to this.

ROGER BERLINER: Is that consistent with the Executive's desires in this regard?

KATHLEEN BOUCHER: You're absolutely right that the developers as Mr. Faden had indicated would be eligible for some Impact Tax credit.

The calculation is something that DOT really should speak to and Mr. Orlin can speak to. The Council President has had some discussions in this regard as well, and has had some discussions with the Executive Staff about how the County Law governing Impact Tax credits should be interpreted in terms of how broadly.

We've had our County Attorney look at that that issue as well.

I don't know if you want to get into those, those issues right now.

ROGER BERLINER: Well, I'm not interested and quite frankly this Council taking on that responsibility per se in terms of delineating what is or is not.

I'm comfortable leaving that to the Executive Branch but I would be interested in ensuring that the legislation itself affirmatively speak to that these developers are indeed eligible, subject to the Executive's determination for Impact Tax credits.

MICHAEL FADEN: We think they are eligible now.

ROGER BERLINER: Yes.,



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MICHAEL FADEN: If there's no development district, they can go to the credit window and get whatever they're entitled to.

So, in that sense, there's nothing for the Council to do.

The law, the law already gives them those credits.

ROGER BERLINER: I would probably feel more comfortable with affirmatively stating that but I leave that to--

MIKE KNAPP: Is that something in the resolution itself?

ROGER BERLINER: Yes.

MICHAEL FADEN: It can certainly be done in the background section of either these resolutions.

It would just essentially note the existing law.

ROGER BERLINER: Thank you.

MIKE KNAPP: Councilmember Elrich?

MARC ELRICH: I think the fact that we're even discussing what's eligible and what's not eligible at this late date fits Mr. Roger's point about the precision of the language messed up.

And this is like way too late in the process to be deciding what belongs in or out of the Development District.

And then what I would hope that we get in any kind of new legislation is absolute clarity from day one about what's going to be in.

And I hope that you'll be able to address my concern of how to assure that the taxes are being collected from day one of the creation of the development district.

I'll reiterate what I said before.

I think they need to file for the development districts almost immediately.

They have to be created and they have to start paying taxes well in advance of anybody buying any homes in these developments.

And that way there is total clarity about what's in the district and what the burden's going to be.

We adjust taxes all the time and I imagine this if more homes come online than planned or fewer houses come online, you can always do, you know, an accounting to figure out how your tax bill might change, a reflection of that.

It seems to be those problems are solvable.

The main thing that we want, if we're going to do this stuff is transparency and this process is anything but transparent if this far along it can't be clear.

I was curious with Mr. Faden, to hear from Mr. Faden, what's the basis for receiving the credit?



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MICHAEL FADEN: Under the Transportation Impact Tax, the basis, the question is whether the particular transportation improvement that someone has paid for adds transportation capacity.

MARC ELRICH: And so some of these improvements that would be in the development district, if the development is not done would be eligible for the developer to recoup.

MICHAEL FADEN: Some would; some would not.

MARC ELRICH: Which led to another question I had which is why wouldn't the residents-- I mean if you created Development Districts, why wouldn't the residents be the ones to get the credit back on the Impact Tax since--if that's the logic.

And they don't get it because there's a development district; then that must be implying that they don't get it.

Because the residents are paying for it, so why wouldn't the residents get the credit back against the development district?

That seems to be the fair thing because all the builder was, in this arrangement seems like they were the agent for the eventual residents to merely construct the infrastructure so that the residents would pay for it.

In which case, they simply made a temporary loan, built the infrastructure and they were expecting that the residents are going to pay them back so why won't you re-credit the impact fees to the residents where you have the development district?

MICHAEL FADEN: I can speak to what the current law does.

You're asking a more of a policy question.

The current law, under the current law, the Impact Tax is paid by whoever applies for the building permit, normally, the builder.

And the credit would go back to whoever paid the Impact Tax.

So, it would go back to the builder.

Whether the builder made any kind of promises, whatever, to the buyers is fairly--seems-- strikes us as fairly unlikely as far as recouping any credits made.

Looking to the future, that could be changed.

You could amend the Impact Tax Law to set up any credits.

In the case of credits that have come well after the fact--and normally credits are calculated at or around the time the actual building permit is applied for.

This is an unusual case.

You could considerably amend going forward the Impact Tax Law to cover this sort of situations but it doesn't really cover it now.

MARC ELRICH: But it seems to me that if the developers paid the tax expecting to be reimbursed, then, in fact, they knew they weren't actually paying it.





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They knew that somebody else was going to be paying it.  
They expect to be reimbursed for it by the Development District.  
So, they obviously anticipated somebody else actually paying the bill rather themselves paying the bill.  
I just--I mean I think this is very convoluted.  
This whole thing is right now.  
I definitely would be supporting Mr. Knapp, I mean, off the table.

MIKE KNAPP: I think part of those will be addressed in the discussion when we get actually to the bill itself; but okay.  
Councilmember Trachtenberg from the MFP committee, actually, I guess has a question on the resolutions.  
And I will just turn it over to you because there aren't any further questions on the resolution that I see.  
So then, you can just take over to walk us through the Bill 36-07.

DUCHY TRACHTENBERG: Okay, thank you, President Knapp.  
Actually not so much a question about the resolution.  
Again, the third item, the new resolution which is being introduced today.  
Really more just commentary about both resolutions and I feel this is something that's certainly been on my plate for almost a year's time.  
And so, I've had the benefit of many a conversation within the committee, and I can recall the rather robust conversation that we had the night of the public hearing which seems a long time ago.  
But indeed, I think it was about six months ago.  
I want to make it very clear to people that are with us today, and really also listening because I've had a lot of inquiries directly through my office that while it is true that we have had peripheral conversation on the first resolution that was introduced last November in my committee; actually, that resolution was never assigned to my committee. So, the main point of focus for us has simply been the bill, the Amendment Bill that I sponsored and introduced last December.  
And I want to make that clear because we've gotten very--a lot of inquiries from people about why we weren't addressing head on the resolution.  
And that is why it was not assigned to my committee and I want to make that really clear. And it doesn't mean that it should have been, if that is something that the Council President decides.  
And I feel I need to say that because I've gotten a lot of angry messages about the fact that I haven't scheduled it within MFP.  
And I want to clarify what the process is so there's no misunderstanding.  
And obviously, because we've talked about the set of amendments, it's given us an opportunity to talk about that first resolution because clearly it provides us--it did on my mind with the right context to have that conversation.



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I think I've been very clear about the fact that I want to approach this and focus on the future that I do not agree, respectfully disagree with my colleagues about the need to not discuss the bill.

In other words, I think because of the fiscal climate that we're in, this is why we precisely should handle this topic.

I think we all know that we would not have seen Clarksburg in any shape or form without the use of Development District tools.

It would never have been planned or developed based on what the needs would have been.

And I think that really needs to be underscored and I would certainly agree that the process has been flawed to some degree.

I would agree with that.

"Messed up" is probably a good characterization.

However, it doesn't remove the fact that we are in a difficult time that we have to make investments; and the way we can do that most readily is to clean up our act and move forward and that is what I've stayed focused on within my committee.

I believe that given what we know about fiscal times, what we know about house values in Clarksburg and that is very much on my mind that to continue a state of paralysis in that community doesn't benefit any of the residents that live up there.

And I feel like I need to state that for the record.

So, I'm clear about where I'm going with this, and I would imagine in the next few days, the next few weeks, it will become very clear what the consensus of the body is on both this resolution which has just been introduced this morning, and the original resolution that was produced last November.

So, those are my comments about the resolutions.

I understand we're not going to be voting on them this morning, that we're going to revisit the topic, I assume in another week.

So, with that and with the idea of moving forward on the table, we're going to entertain discussion on Bill 36-07, again, the continuation of the conversation which we began last week.

And I know that Mr. Faden is here to walk us through the packet.

I believe when we concluded our dialogue last week, we had stopped at Item 3, and that would be the, I guess, adjustment of the developed property definition.

That's where we left off.

And I would ask Mike to walk us through the packet.

We have, I believe seven items starting with that that need to be addressed this morning.

MICHAEL KNAPP: If I could, I actually had a question to go on eligible infrastructure. I just wanted to get a clarification.

We could go back to that.

One of the questions--since we're looking at this as potentially a tool for places like White Flint, we're looking at redevelopment areas; how does that apply to kind of the eligible infrastructure criteria?



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Given the way that bill is structured, what would be eligible criteria?

What would be eligible infrastructure?

What we've done with kind of going forward has been more a Greenfields type of development.

How would the eligible infrastructure definitions applied to something like a redevelopment project in White Flint?

MICHAEL FADEN: That's a very broad definition that would basically apply to anything ultimately that the Council thinks the Development District should fund.

It's infrastructure of all sorts.

The definition attempts to be very comprehensive on that.

And as this makes clear, it can be infrastructure, the Planning Board requires a development to go forward with.

It can be whatever you think is appropriate for that sort of funding.

MICHAEL KNAPP: And if something is required as a condition of subdivision by the Planning Board, is that deemed eligible infrastructure--can be considered eligible infrastructure?

MICHAEL FADEN: It can be.

It is not restricted from being eligible infrastructure for that reason.

MICHAEL KNAPP: Okay.

So, a determination would then have to be made by, first, the executive and then the Council?

MICHAEL FADEN: Right.

MICHAEL KNAPP: Okay.

Okay.

DUCHY TRACHTENBERG: Okay, does that answer your question?

Actually, Mike, while we're in the topic of infrastructure, could we talk a little bit about the Clarksburg Town Center and the Impact Tax, and the fact that that was satisfied and how--if you could describe for colleagues again how the infrastructure was supported, in other words, that it was paid out of pocket by the developer.

I think it's important to note that.

MICHAEL FADEN: I think that is largely true.

I don't have all the details at my fingertips as to who built what

Again, Glenn is still here.

We can ask him to--



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DUCHY TRACHTENBERG: Yeah.  
Glenn, if you could come up...

MICHAEL FADEN: Join in and add any details that I don't have.  
A number of specific road items were constructed by developers.  
I'm not a hundred percent sure that they all were.

GLENN ORLIN: Well, in the packet on Agenda Item Three, first of all, there was \$1.6 million in Development District Funds that was supposed to go for the String Town Road Extended Project. That was a project built by the county.  
And so there's a hole that we're not sure how that was built or who's been billed.  
However, there was a list of four additional roads where improvements were done under a separate PDF, Clarksburg Town Center Development District roads, totaling by \$8.5 million.  
Two of those projects had been finished.  
They were built by the developers or paid for the developers.  
The other two have not been yet and they're awaiting the decision by Park and Planning about the agreement next month.

DUCHY TRACHTENBERG: Right, so that's contingent on our receiving the parameters from Park and Planning which I believe is scheduled for some time, November?

GLENN ORLIN: That's my understanding.

MICHAEL KNAPP: Sixth.

GLENN ORLIN: Apparently.

DUCHY TRACHTENBERG: Uh-huh.

GLENN ORLIN: Of course, the library--well, the library is a different story.

DUCHY TRACHTENBERG: Right, the library is--

GLENN ORLIN: Historical library.

DUCHY TRACHTENBERG: I know during budget cycle last year, we had, again, another one of those robust conversations.  
So, Mike?  
I think Nancy has a question.

NANCY FLOREEN: Yeah.



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I mean I have a--I would like you to think about this in the context of White Flint because that is the next step.

DUCHY TRACHTENBERG: Next frontier.

NANCY FLOREEN: I don't think we're going to recommend that in a Development District for a--well, we're not.

That's not in the Twinbrook master plan.

But I suspect--I gather from what we've heard, that's going to be in the White Flint Sector Plan. Now, whatever gets constructed in White Flint, you can be sure it's going to serve more than a particular project because it has an urban district and it's going to create mobility.

It's going to A, satisfy whatever APF stuff that we want in that area, and we'll have, I'm sure, a vigorous conversation about that; and B, it will serve more than that particular project.

It will be designed for current mobility like people would say that stretch is already overburdened depending on how you look at it.

But in any event--and then there are already a lot of properties in place in White Flint. I mean it's pretty well-developed.

So, the way--we could agree that there are certain roads or transit stations or, you know, you name it, things that we would like to see in the White Flint area.

And it could be said, as part of the White Flint Master Plan, that we should have these roads, or whatever it is, bus ways or bus rapid transit lines or whatever it is.

Is this going to make it harder for us to do that?

MICHAEL FADEN: I do not think so.

I think it actually might help you go through that process by clarifying what the ground rules are.

NANCY FLOREEN: Well, I know ground rules are good, but are they achievable? If it says--I just want to make sure that the language was general enough to commit that.

MICHAEL FADEN: The key language which was discussed two weeks ago is on the bottom of circle 10, top of circle 11 of this packet.

NANCY FLOREEN: Yeah.

MICHAEL FADEN: And it basically says that the Council can decide for an infrastructure improvement which serves more than simply the Development Districts itself, then if it provides added transportation capacity, enhances public services or other significant public benefits that can be funded by the Development District; and of course, the Council will ultimately decide what percentage of the cost of that improvement the Development District would fund.



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NANCY FLOREEN: And my other concern has to do with the 80% number which we're not exactly on but I'd like to ask it anyway.

In Tysons' corner, they agreed to public improvement plan for Metro, basically.

The extension or this has been imposed as I understand it.

80% of owners of the real property where you have a lot of real property in place, a lot of individual properties in place is--can be a challenge.

In Tysons, I suppose there probably are as many property owners, perhaps, but then on the other hand there are, you know, x number of not that many, although huge buildings and a mall which is extraordinary, but presumably has one owner.

>> I think you put your finger on it, Councilmember Floreen, in terms of White Flint.

The issue is not going to be--I think the bill will serve it very well, will serve that area very well in terms of what's eligible infrastructure.

One of the difficulties in White Flint is going to be the consent issue because the Development District can only be created in two ways.

Each way requires consent.

If the, you know, either 80% of the property owners request and consent, in addition to 80% of the value, or the Council creates the district, initiates it, but also obtains 80%--

NANCY FLOREEN: So, either way, you need--

KATHLEEN BOUCHER: Either way, you need that consent.

MICHAEL FADEN: I think the challenge following from that--the challenge in creating a White Flint Development District is going to be drawing the boundary lines.

And I expect a lot of negotiations to go on between property owners over, who's in and who's out; and even if those out may end up through other mechanisms paying a share of whatever improvements happen there.

DUCHY TRACHTENBERG: Yeah, and I can assure you that's the conversation that's going on right now in the community.

NANCY FLOREEN: Well, not only that, as you know, we have another report that's under way looking that's looking at different financing districts we have right now; urban districts, parking districts, and all that.

So, that may be overlapping issues and so forth.

So, there may be a different approach that we choose to undertake.

I just want to make sure we have the tools that we need to be creative about this.

MICHAEL FADEN: One more, excuse me, one more point is as I'm remembering it is not amended by this bill, but the current law says the development district, what's in the Development District doesn't necessarily have to be contiguous.



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MICHAEL KNAPP: Say that again.

MICHAEL FADEN: The development issue doesn't have to be one block of contiguous land.

So, if you have a White Flint situation where the district needs to skip over some properties in order to be viable; I believe and I'll double check that as soon as we're done here that the current law would permit that.

NANCY FLOREEN: Okay, okay.

MIKE KNAPP: Councilmember Leventhal.

GEORGE LEVENTHAL: Well, I would like an explanation of why this mechanism is better for White Flint than the Urban District mechanism that we have in Wheaton, Silver Spring, Bethesda and other areas?

MICHAEL FADEN: Urban districts don't actually fund this construction, they fund services.

GLENN ORLIN: Well, they can construct small-capital projects, but not in the vein or magnitude with our--oOf that magnitude that's--

MICHAEL FADEN: That's the basic distinction.

GLENN ORLIN: Under the current law.

MICHAEL FADEN: And Urban District law, also, another quite relevant point is that to the extent that urban districts are funded by property taxes, which they mostly are, those taxes go under the tax limit in Section 305 of the County Charter.

GLENN ORLIN: And we had that discussion a few months ago.

MICHAEL FADEN: That's also true for other kinds of special taxing districts. You could easily have, for example, in White Flint, a special taxing district that covers the whole area and not have to worry about things like consent and precise boundaries but the proceeds would--

GLENN ORLIN: Now, in White Flint, we hear from Duchy's neighbors and Nancy's neighbors who live in residential areas next to White Flint. And we'll hear from them a lot in the course of this plan.

DUCHY TRACHTENBERG: And Roger will hear from them too.



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GLENN ORLIN: And they may believe that the effect of what is being constructed in White Flint is of significant consequence to them, but presumably, they would not be part of the residential areas that are interspersed in and along there, the Garrett Park neighborhoods and right around White Flint, and the subdivisions, you know, of the street where Duchy lives.

Presumably, they would not be included in the development district but they might feel that they would want to have input into the infrastructure that's created.

But this wouldn't allow for that.

They may not want the Development District to be created.

MICHAEL FADEN: But ultimately, it is you all who decides what infrastructure, first of all, what infrastructure is created. And second, what is paid for by the Development District or other mechanisms so they have all the input they otherwise would into that decision.

GLENN ORLIN: And then White Flint Development District isn't going to be necessary to avoid the residential housing.

There could be a redevelopment--there might be high rise or mid-rise housing.

So, there still would be residents to deal with.

GEORGE LEVENTHAL: So, again, are we putting our self in a situation in White Flint which we discussed in Clarksburg that is even you're going to have a handful of property owners today--not a handful, it's a large number of property owners, there's many parcels but you have commercial owners who intend to build multi-family housing who will raise their hand now and say, "Yes, I agree that there will be a Development District," ultimately, and then that will be imposed on the residents of the multi-family housing later who weren't present today to vote for it, is that correct?

MICHAEL FADEN: One could argue with the term imposed on.

One thing this bill does as was discussed a little bit last week is strengthen by quite a bit the notice provided to home buyers in the proposed Development District, so that they would go in.

GEORGE LEVENTHAL: They would know when they move in.

MICHAEL FADEN: Right.

GEORGE LEVENTHAL: Unlike the folks in Clarksburg who could only be confused when they moved in.

MICHAEL FADEN: You'll get an argument about who knew what in Clarksburg, but I think that argument shouldn't happen in the future.





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JENNIFER BARRETT: And there's a change in this bill that allows us to tax prior to the bond issue. The current legislation only allows us to levy taxes after bonds are issued. And that's been cited, you know, in many different ways as a way of notice because then it's already on the tax bill in which companies become aware of such.

MIKE KNAPP: Okay.  
We're back on--

DUCHY TRACHTENBERG: Mike, I think we're back on Item Three.

MICHAEL FADEN: We are starting with Issue Three.

So, this is the question of fully developed property.

Original Development District Law in the early 1990's took into account that in the kind of Development Districts that were expected, there will be occasional existing properties and that was true in the 1st District in Germantown.

The decision was that those properties that were already fully developed should not have to pay Development District tax.

But if they went to further development, they would be subject to the tax because of the chain of events in Clarksburg, the question came up over whether houses that were sold and built after the Development District process started but before it came to completion would be considered fully developed.

Our understanding of the intent and language of the current law was that that would not be the case.

This clarifies that by making it clear that any property--the term fully developed does not include any property developed after the first resolution and if it's developed by a petitioner or the petitioner successor in interest.

In other words, the original landowners are those who they sold to.

That would be not considered fully developed property, and thus, exempt from the Development District.

MICHAEL KNAPP: So, anything between Resolution One and Resolution Two would not be considered fully developed?

MICHAEL FADEN: If it was on the land of the petitioners or their successors in interest.

DUCHY TRACHTENBERG: Marc?

MARC ELRICH: But if we took the approach that I was asking for, this would be irrelevant because everything would be established before anything was built.

MICHAEL FADEN: Correct.



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JENNIFER BARRETT: You could--I'm not sure because you could theoretically have somebody that chooses not to develop.

What the law allows us to do is if somebody can sort of fully develop and therefore is exempt from paying the taxes.

Should they later come along and develop, then we can the--then have to pay their share. So, it's rather elegant in that it allows somebody to hold off, still be included in the District, still be included in the planning and process, but not pay until they actually start developing.

And we have to look at that really carefully as you all are indicating in regards to White Flint, that kind of an urban development pattern.

But we have these instances like indicated in Germantown, with Germantown Development District.

MICHAEL FADEN: That's true in the current law.

That's not really--that aspect hasn't really changed here.

JENNIFER BARRETT: Retaining that as is but it's a--

MARC ELRICH: So, they would be no taxes during that interim period or no taxes on the new value?

JENNIFER BARRETT: If they were not part of the redevelopment that occurs, you could still put the district on them.

They could choose to retain their property as is before it's fully developed state but should they redevelop later, then we would capture revenues from them to contribute to the infrastructure that they are viewed as having benefited from that redevelopment.

MICHAEL KNAPP: And would you go--okay.

The Development District says it's in existence for 20 years.

They don't develop those for the first eight years.

So, would they then only be charged for the 12 years going forward?

Or would they be charged retroactive for the eight years that they hadn't been--?

JENNIFER BARRETT: I believe it's retroactive.

MICHAEL FADEN: I think it's retroactive.

MICHAEL KNAPP: Let's check more first to figure out that because I mean in addition to whatever other fees you've got out there, you may actually inhibit the additional development because it becomes cost prohibitive because they don't do it for ten years.

They've got to do everything in arrears.

So, we have to look at that too when we get to that point.



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MICHAEL FADEN: But the thinking there is that they are benefiting from the infrastructure of the District.

MICHAEL KNAPP: So, their value is increased?

JENNIFER BARRETT: Their development potential is benefited.

MICHAEL FADEN: Right.

Now, the examples were small, isolated houses in Germantown which could convert to whole housing developments after the District.

And the thinking was that they should be part of the District once they develop just like everyone else.

MARC ELRICH: But you could still maintain this parallel process where, I mean, if it was a whole, it was a large house on a very large lot, which is what's usually required for a subdivision, you could still require that whatever was going to be put in place was put in place prior to the construction of any houses on that because it had to go through a subdivision process in which point they should also begin the, you know, the Development District process.

And you could still create the situation where the taxes go on before the houses go up.

MICHAEL FADEN: You could do that.

I'm not sure that would be the fairest way but the thinking in the original law was that if they are not developing at that time, then they--the taxes don't go on them.

MARC ELRICH: I'm just saying but at the point--you just don't go from a house on 20 acres to 40 half-acre lots in three months.

I mean the developers would love the process--

JENNIFER BARRETT: Are you saying that you would initiate the taxation at the time they begin the development process, not after it's all done?

MARC ELRICH: Right.

JENNIFER BARRETT: I'm not sure current law gets into that level of specificity if it's--

MICHAEL FADEN: I don't think it does.

And as Ms. Barrett said earlier, you have questions about how the tax and how many years is it going to be for example.

MARC ELRICH: I would just think there's a way to begin the process so people again know before they get to the end.



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MICHAEL FADEN: Well, again, the notice for prospective home buyers, I think, is the primary way that's covered.

DUCHY TRACHTENBERG: I don't think there are any more questions on that item. Let's move on to time-limits.

MICHAEL FADEN: Next item is time limits on Planning Board and Executive Actions. This was primarily a request from attorneys for developers who had had to, from their point of view, wait quite a long time not particularly for the Planning Board but more for the Executive Branch to submit its fiscal reports.

The committee discussed this in a good, great deal of detail and ended up with a time limit but one that has some flexibility built in.

Essentially, it's six months requirement for both the Planning Board for its planning review and the Executive for his Fiscal Review, allowing up to a 90-day extension for unavoidable delays.

So, there is a time limit in there where there wasn't one before.

DUCHY TRACHTENBERG: Yeah, and this is very much in response to the public discussion, and of course, what was determined and discussed because of the OLL report.

MIKE KNAPP: So, walk--practically walk through what that would mean.

MICHAEL FADEN: So, the first stage, after the council passes an initial resolution that says--

MIKE KNAPP: And so, petition has been filed.  
Send them a report that we want to do something.

MICHAEL FADEN: Right.

MIKE KNAPP: And we've got the 80%.  
And we would--we'd validate that.  
We would vote and a clock would start.

MICHAEL FADEN: Well, then the petitioners file applications for provisional adequate public facilities approval which is just basically a group adequate public facilities review of all the developments in the Development District.

And when that starts, when they filed that with the Planning Board, that starts a six-month clock with a possible three-month extension.

The Planning Board produces that report which then, which says, "Okay, here's what we think--here's the infrastructure. We think these developments will require to go forward?"



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That then goes to the Executive for him to produce a fiscal report saying, "Okay, how much is all that infrastructure going to cost, what share of it should the Development District pay?"

And the Executive then has a similar six-month plus three-month clock running to produce that report.

MIKE KNAPP: Okay, and then once the report is produced?

MICHAEL FADEN: It comes to you for a decision on the second resolution.

MIKE KNAPP: And then there's no other time limit after that?

MICHAEL FADEN: No, no.

MIKE KNAPP: Okay  
All right.

MICHAEL FADEN: The next issue is competitive bidding of the construction of the infrastructure.

Basically, what the amendments from the Committee do is clear up a number of ambiguities in the current law; allows the county to buy infrastructure as well as build it itself which we think was always true with the law was not a hundred percent clear on exempts that purchase for construction from the normal procurement process which applies the reimbursement ceiling which essentially the county attorney's office has suggested in response to an IG's report that the ceiling is based on exempts with the lower--either the developer's cost and the reasonable cost price analysis. And finally, exempts professional services, like the consultants, the financial consultants the county uses in evaluating development districts from competitive bidding also.

MARC ELRICH: Why would they want to exempt them from competitive bidding?

MICHAEL FADEN: Because essentially, we have been using consultants who know this process and rather than subject the process to a low bid, the Executive Branch has people that would use and get the most benefit out of it at least from their point of view.

MARC ELRICH: How often do we do this?

MICHAEL FADEN: Whenever there's a Development District proposed.  
There's been three so far.

MARC ELRICH: Anything else we build, we build with bids, right?

MICHAEL FADEN: Are you talking about on the construction?



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MARC ELRICH: Yes.

MICHAEL FADEN: The construction, it turns out we have not--I can't give you the exact dollar figures but most of the infrastructure has not been built by the county anyhow. It's been built by developers, paid for by developers. And so, it's more like a turn-key process.

MARC ELRICH: In the Development District?

MICHAEL FADEN: Yes, in the Development District as opposed to elsewhere.

MARC ELRICH: Does anybody--I mean can you give us any information on the difference between cost of projects in Development Districts versus cost of projects outside Development Districts?

GLENN ORLIN: I don't have the information today. We can try to get it.

MARC ELRICH: Can you track that down? I'm just inherently nervous about letting somebody tell me how much it costs to do something without real checks and balances. I would feel better if I knew that our costs were the same as what we're paying for them to do; then it would seem reasonable.

MICHAEL FADEN: I don't think there's any incentive in the process for a developer to increase the cost because they're likely to--under the structure in here--if the county's cost are inflated, the county will pay what it thinks looking back is the reasonable cost so the developer could get stuck with around.

MARC ELRICH: If the county thinks it's inflated.

MICHAEL KNAPP: How would we assess that?

JENNIFER BARRETT: We do use an estimating process when we go through the fiscal report. The law does require us to use estimators to confirm the developer's cost. In addition, when we actually do pay them, the reimbursement, the disbursement of bond proceeds after they've built something; that also is reviewed by an inspector with whatever agency is applicable. And they're attaching all the detailed cost sheet within AIA. I think it's called the Architect Certification--

MARC ELRICH: Did that happen in Clarksburg?



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JENNIFER BARRETT: It happened in West Germantown and Kensington village. Those were the two where we--

MARC ELRICH: Right but that process of tracking and preparing?

JENNIFER BARRETT: The process of estimating did. It's part of the effected fiscal report but we've never dispersed any funds. So, that part has not happened.

MARC ELRICH: But when the inspector general talks about a lack of documentation--

JENNIFER BARRETT: The developers are building these roads the way they normally would in a normal development process, and the county does not intervene in that process more than in a Development District. The estimating is part of the Executive Report; but they can see the same bonding and permitting process that every development improvement goes through in the county, and that's a substantial process with the Department of Permitting Services. They aren't county projects.

MARC ELRICH: Right.  
What are the IG's concerns with the projects here?

JENNIFER BARRETT: I think he was looking for the same rules that apply to county-built projects, and they simply don't apply here.

KATHLEEN BOUCHER: The other piece that I think the Inspector General missed in his report was that there is another type of incentive that comes from the fact that the council, when you pass a second resolution, creating a Development District and you say a certain infrastructure can be funded, you set a cap. So, for like--for Clarksburg Town Center Development District, I think it was \$17 million. So, if the developers exceed their--in other words, they want to make sure that all of their infrastructure gets funded by that cap as well, and to the extent that their costs are out of proportion, it kicks out--it makes other infrastructure ineligible for funding from the Development District because there's not enough money.

MARC ELRICH: I guess I'm a little concerned about knowing what is the accurate price of something because this Council, we don't build roads. I don't think.

And I think asking us to judge what's the right amount of money, we're going to be heavily dependent on other people telling us what it's going to cost to do things, and I certainly don't want to leave it to one party to tell me what it's going to cost to do things.



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MICHAEL FADEN: I mean, actually, we have more of a public process in paying for the infrastructure in the Development District than we have in almost any other kind because you have several parties looking at it.

DU CHY TRACHTENBERG: Right.  
There's more of us.  
Yeah.

MICHAEL FADEN: Including the developers that have a stake, the executive doing these estimates beforehand which then go into the councils as Ms. Duchy said, the maximum amount set by the Council to fund the district.

JENNIFER BARRETT: We just really--our experience has been--there just isn't an incentive for the developers to overestimate these costs.  
And in fact, with the other two districts, there's something called the B-list.  
So, if they saved money, they could spend it and get reimbursed for other additional infrastructure.  
That also created an incentive for them to have the cost be lower than the original estimate.  
It just it doesn't--I'm sorry to answer you this way.  
It just doesn't work that way for them to benefit in any way from overcharging, overestimating these costs.  
And there's a lot of control points and reviews built into the process to avoid that.

DUCHY TRACHTENBERG: I don't think they're--

MICHAEL KNAPP: All right.  
I have no more questions.  
I have no further questions.

DUCHY TRACHTENBERG: Any more related on that, Impact Tax credits.  
Mike?

MICHAEL FADEN: Impact Tax credits, these are--there's two kinds but everybody needs to keep in mind, there's two kinds of Impact Tax credits.  
There's the Standard Transportation Impact Tax Credits that we discussed earlier where a developer simply gets credit for the cost of whatever transportation capacity it's providing. And then they were built into the Development District Law cross credits against the Transportation Impact Tax for taxes paid by the Development District.  
The original thinking was that in doing so, it would avoid double taxation.  
As everybody reviewed, it became clear that that was unnecessary because the transportation tax credits would still be available to whatever projects they applied. So, this bill repeals the district credits against the Impact Tax.



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MICHAEL KNAPP: No questions?

DUCHY TRACHTENBERG: I guess we'll move on to the disclosure requirements.

MICHAEL FADEN: This bill...Under the current law, there was kind of a basic disclosure requirement, but it only kicked in at the point of sale. It didn't kick in earlier. We've gotten literally a large, Xerox paper-sized box full of disclosures from--submitted by developers' attorneys from the Clarksburg properties to show who did receive actual notice. But that went, as far as I can tell, beyond what the law currently requires. The bill would expand that quite a bit to make sure that the disclosure would be in advertising and sales contracts, brochure, signs--pretty much, you name it, except for classified ads, except for, you know, the very smallest ads. And it would cover not just Development Districts already created but development districts once they have gone past the first proposed Development Districts, once they've gone past the first resolution stage.

MICHAEL KNAPP: Okay.  
I'm just trying to think--

DUCHY TRACHTENBERG: The requirements on damages and enforcement.

MICHAEL FADEN: The bill assigns responsibility for enforcing those disclosure requirements to the Office of Consumer Protection. And in addition to the ability under the current law to avoid a sales contract when the proper disclosure was not provided, it would allow a damages remedy based on actual damages.

MICHAEL KNAPP: Okay.

DUCHY TRACHTENBERG: Then we have a series of technical amendments.

MICHAEL FADEN: The series of technical amendments--the most important of which Ms. Barrett alluded to earlier which allows the taxes for an approved Development District to start after approval but not wait until the bonds are issued as the current law requires. There are a number of others, just clarifications mostly requested by bond council.

MICHAEL KNAPP: All right.  
Okay.

DUCHY TRACHTENBERG: I think Marc has a--

MARC ELRICH: Is that to regulate timing of Development District taxes?



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The point you just alluded to?

MICHAEL FADEN: Yes, to allow them to start earlier that they would be under the current law.

MARC ELRICH: Is allow different than require?

MICHAEL FADEN: I have to double check the language.  
I think it is allow.

MARC ELRICH: Who choses?

MICHAEL FADEN: Executive Branch.  
Well, actually, in the end, the Council because you pass the tax rate for the Development District as part of the overall tax rate resolution.  
So, if it's not ready to go, you can say, we're not levying the tax this year.

MIKE KNAPP: Councilmember Floreen?

NANCY FLOREEN: Yes.  
I apologize for bringing up an issue.  
I think folks have talked about it a little but I'm still worrying about White Flint.

MICHAEL KNAPP: We'll have a while to do that.

NANCY FLOREEN: Yeah.  
I just got started worrying.  
On a fully developed property issue, under state law, a property that is fully developed is, by law, exempt from any special taxing district.

MICHAEL FADEN: No.

NANCY FLOREEN: That's what your memo says on page four.  
Any property that's fully developed before a Development District is created is exempt.

MICHAEL FADEN: Right.  
Under this specific State law that covers--I'm looking for the phrase--basically, those kinds of bonds.

NANCY FLOREEN: Well, the question is for White Flint.  
There is a couple--I mean there is one project under way right now across from White Flint.



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There are a couple of others in that vicinity that look to me that they're not likely to ever redevelop, you know, any time in our lifetimes, for sure.

MICHAEL FADEN: Right.

NANCY FLOREEN: And so the question is, would we be absolutely precluded from including them within some sort of special taxing district in that vicinity?

MICHAEL FADEN: No.

Certainly, they're not precluded from, including them in a different kind of, in a regular special taxing district as opposed to a Development District.

NANCY FLOREEN: As opposed to a Development District?

MICHAEL FADEN: Yes.

There's no--nothing is affected here.

NANCY FLOREEN: So, the only way to permit us to examine to benefit from resources from those properties then would require us to go to the legislature and then amend this stuff accordingly if we wanted to?

MICHAEL FADEN: Well, no.

Under the current structure, you could create a White Flint transportation funding district which would be a special taxing district, not a development district.

NANCY FLOREEN: So, then we would make that a different kind of district.  
Is that what you're saying?

MICHAEL FADEN: Right.

But the property tax received from that district would have to fall under the property tax limit, the Charter limit.

NANCY FLOREEN: Yeah.

Well, I know there's that issue.

MICHAEL FADEN: Right.

NANCY FLOREEN: But--

MICHAEL FADEN: But, no, you can get both.

From those properties, you can apply a different kind of special taxing district.

NANCY FLOREEN: It just wouldn't be one of these 80% kind of districts?



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MICHAEL FADEN: Correct.  
So, it wouldn't be a development district.

NANCY FLOREEN: And if we wanted to do the--is there any...?  
Okay.  
So, it's just a different form of--so, this really isn't a device that would work in White Flint?

MICHAEL FADEN: Well, if--

NANCY FLOREEN: For the 80% rule and the fully developed rule?

MICHAEL FADEN: If the owner of that property consented to be in the development district, it could cover them.  
If not, you'd have to look at this other mechanisms.

NANCY FLOREEN: Well, it says, "Any property is exempt."  
So, I suppose you could say, "Oh, not, no. I want to."  
Well, they'd have to agree in any event.

MICHAEL FADEN: Yeah.

NANCY FLOREEN: So, by law, it currently says "is exempt."

MICHAEL FADEN: Right.

NANCY FLOREEN: No "ifs, ands, or buts."

MICHAEL FADEN: Let me double check that.

NANCY FLOREEN: Okay.  
All right.  
Thank you.  
But that's a state law issue as much as anything.

MICHAEL FADEN: Well, it's a combination of state and county law, and I have to double check the state law.

NANCY FLOREEN: Okay.  
Thank you.

DUCHY TRACHTENBERG: Okay.



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Then, we'll move on to the last item, the meaty issue of applicability which was the basis, I believe, from most of these work session conversations.

MICHAEL FADEN: Well--and this was discussed to some extent two weeks ago. Basically, what the committee was striving for in the language on Circles 24 and 25 is neutrality so that the law would be prospective, could cover future actions in current development districts but would not affect either way actions already taken.

And we discussed the language.

There are four sub-sections to this.

If you all want to go back into the same level of detail, but the sub-section starts in the bottom of Circle 24 and extend on Circle 25.

DUCHY TRACHTENBERG: I think we should go through it

MICHAEL FADEN: Okay.

MIKE KNAPP: Yeah.

I would suggest we do that.

MICHAEL FADEN: Okay.

Subsection A essentially says that the changes in law made by this bill apply to any action taken after this act takes effect with respect to any development district regardless of when it was created.

Now, there's very limited applicability of this to the Germantown Development Districts because they're on the books.

They're funded.

All they're doing is paying off their bonds.

Some things, assuming that Clarksburg Town Center District did go forward, some of the clarifications in here would apply to future actions of the district including the issuance of bonds.

It wouldn't apply in subsection B.

It tries to make that clear.

Any change in the law here doesn't affect any action already taken so that if a requirement is changed here that that does not make the previous action valid because they didn't comply with that requirement, for example, the notice requirements.

MIKE KNAPP: Okay.

MICHAEL FADEN: And in subsection C is the construction section which attempts to walk a fine neutral line, although I think it's been--they criticized a bit on both sides which may mean, to my point of view, that it succeeded.

The language is as Mr. Berliner pointed out last time is not the most transparent, but we think--and we've been trying to find something better but we think it works.



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MIKE KNAPP: Okay.

MICHAEL FADEN: There's a lot of negatives in here.

But, basically, it's saying that the amendments in this bill to any particular section do not indicate that the previous version of that provision should be interpreted differently from the provision as amended.

MICHAEL KNAPP: The one question I would ask is you had this bit of discussion--

DUCHY TRACHTENBERG: And he says that with a smile on his face.

MARC ELRICH: Feel free to interpret it.

NANCY FLOREEN: We are doing is, of course, conservation.

MICHAEL FADEN: This is a warm up for that.

MIKE KNAPP: We had a discussion earlier on this Tweener Provision, this notion of properties that were not necessarily fully developed, but that had been--a lot of it has changed in between the resolutions.

MICHAEL FADEN: Right.

MIKE KNAPP: So, would this--would this, given the change that you've made in the law, in the event that I cannot persuade my colleagues to eliminate Development Districts in the next week.

But if--if so things go forward and you still have an initial resolution in Clarksburg, and with the Tweener Provisions you've changed here, would all of those come from, all of those properties that you now said are no longer fully developed, they would now be subject to the Development District?

MICHAEL FADEN: Well, whether they're subject would be decided on the basis of what the law was at the time

I believe at the time they were developed, they have to think that through.

But, in other words, they changed--what we would see as the clarification here would be subject to subsection 3, which is that's attempting to be neutral.

The fact that it was clarified this way doesn't necessarily indicate that it was different before.

The language and intent would have to be parsed based on what the language was at the time.

MIKE KNAPP: At the time of which?



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MICHAEL FADEN: At the time the properties were sold, developed.

MIKE KNAPP: Okay.

So, assuming this passes next week and properties are transacted up until last Monday, anything that had, any transaction that had occurred up until last Monday would have been--

MICHAEL FADEN: Actually, up until 90 days after the Executive signs it. Right.

MIKE KNAPP: So, anything would have, would have been--whatever the previous law had said, they would be subject to that interpretation, not the interpretation of whatever changes we've made here.

MICHAEL FADEN: Yes.

MIKE KNAPP: I don't want to set up a "got-you" situation where--

MICHAEL FADEN: We're trying to avoid--the committee took pains to avoid the "got-you" situation.

MIKE KNAPP: Okay.

DUCHY TRACHTENBERG: Uh-huh.

MICHAEL FADEN: And finally, in subsection D--

MIKE KNAPP: Councilmember Berliner?

ROGER BERLINER: As I recollect our conversation, there were those in the Executive Branch, in particular, as I remembered who were seeking a more affirmative statement that in fact our clarification of the language affirmed their previous interpretation. And it was against that that we're struggling to find a neutral ground to say no, we will accept this interpretation going forward.

We will not disturb whatever interpretation a court of law may give to the language that existed previously.

Okay?

So, it was a very delicate dance that we were trying to do that kept things in a very neutral setting.

DUCHY TRACHTENBERG: Right.



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And when I referred to a meaty conversation, that's what I was thinking about and recalling that at each of the work sessions, that was raised.

And again, the intent of the committee was to try to move us forward, but again not set a precedent.

MIKE KNAPP: Okay.

And again, with subsection D?

MICHAEL FADEN: Subsection D, basically says the new notice requirements apply to everything after this act takes effect regardless of when the development was created or proposed.

So, if this law takes effect and if there was still a Clarksburg Development District going forward, from the day this law takes effect, the new notice requirements would apply to property sold there even though the district was already created.

MIKE KNAPP: Okay.

DUCHY TRACHTENBERG: Well--

MIKE KNAPP: I do not see any further questions.

DUCHY TRACHTENBERG: Okay.

Thank you, President Knapp.

It would seem to me that we're continuing our housekeeping.

And with that in mind, I want to clarify what some colleagues want further clarification and information on.

And I guess, in the discussion we've had here this morning, it would seem that we'd want a little bit more fiber around the state law, specifically to the fully developed property concept.

And I know that Councilmember Elrich wanted additional information for the Executive Branch about competitive bidding.

So, I'm assuming that you would bring us back that information for next week's vote on this bill.

Am I correct?

MICHAEL KNAPP: That's my expectation.

DUCHY TRACHTENBERG: It will be on the agenda then for a final action next week.

MARC ELRICH: And the language about the issue about how to make sure the taxes are imposed earlier rather than later because I'm not very interested in making sure--

DUCHY TRACHTENBERG: So, what did you want the staff to provide?





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MARC ELRICH: The process--what Jennifer mentioned earlier, looking at a way to make sure these mechanisms are triggered at the very, very beginning before the houses get sold, if there's a way that the taxes get on the property prior to the sale of the houses.

DUCHY TRACHTENBERG: Okay. And I would ask that those bits of information be shared by the Executive Branch and Mr. Royalty and Mr. Faden in advance so we have sense of what the proposed language is going to be before we actually get the packet.

MICHAEL KNAPP: I have one question.

I just want to say as it affects necessarily, in the technical amendments area, there's a notion of this authorize the Council to create sub-districts?

MICHAEL FADEN: Yes.

MICHAEL KNAPP: Sub districts to what?

MICHAEL FADEN: To a Development District.

That could be particularly useful for some people think in an area like White Flint.

DUCHY TRACHTENBERG: Exactly.  
Yes.

MICHAEL FADEN: So you could have the have the sub-district with certain infrastructure attached to that sub-district or a higher--share that infrastructure paid by that sub-district. It allows for more tailoring.

Then, you could have also created multiple development districts--overlay development districts but the paperwork there would have been even more horrendous, so...

DUCHY TRACHTENBERG: Basically, get the authority once and divide it as appropriate going forward?

MICHAEL FADEN: Right.

JENNIFER BARRETT: Particularly, with sub-districts, you can secure different bond issues with a different piece of a geographic area and tax revenues.

What happened in the past is, you know, the whole thing was held up because of one piece. This way, one piece could go forward. You could start paying for some things earlier.

MICHAEL FADEN: That happened in Germantown, I believe.

MIKE KNAPP: Okay.



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I would urge us as we move forward, we ought to be careful with that because that sounds a bit like a “got-you” provision as well.

We put a development district in place and then all of the sudden; you’re imposing higher costs or charges for some sub-district of that as opposed to some other areas.

And I hear what you’ve just explained which I think makes sense so we could move forward with some pieces but depending on how you structure it, you could--

JENNIFER BARRETT: You would be seeing it upfront.

MIKE KNAPP: Okay.

JENNIFER BARRETT: In the recommended Fiscal Report.

MIKE KNAPP: Okay.  
Okay?

DUCHY TRACHTENBERG: Okay.

That would conclude the conversation this morning, again, with the intent of taking action next week and filling in those blanks and getting that information in the interim.

MIKE KNAPP: Okay.

I see no further comments.

The Council stands in recess.

We have lunch with the Board of Education beginning at 11:30 in the fifth floor conference room.

We're back here at 1:30 p.m. for public hearings, and then we have a lengthy district council session this afternoon.

Thank you all.

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1 PHIL ANDREWS: Good afternoon, everybody.

2 We are going to get going with the public hearings.

3 This is a public hearing at FY10 Washington Suburban Sanitary Commission Spending  
4 Control Limits at the Montgomery and Prince George County Councils set for the FY10  
5 budget of the Washington Suburban Sanitary Commission.

6 The process requires the council set annual ceilings on WSSC's new debt, debt service,  
7 water and sewer operation expenses and the maximum average rate increase.

8 Persons wishing to submit additional material for the council's consideration should do so  
9 before the close of business on October 9, 2008.

10 There will be--we'll announce when there will be a transportation, infrastructure, energy,  
11 and environment committee work session.

12 And if you want additional information as the schedule develops, please call 240-777-  
13 7900.

14 We do not have any speakers for this hearing, and I think we do have an announcement  
15 at this point about when the work session is going to be.

16  
17 KEITH LEVCHENKO

18 All right, the packet notes the committee review scheduled for October 13th, however, we  
19 are in the process of changing that to October 23rd.

20  
21 PHIL ANDREWS: Okay.so noted. All right, next. Good afternoon.

22 This is a public hearing on Expedited Bill 30-08, taxicabs licensing, which will allow the  
23 Director of Transportation to waive certain restrictions on transfers of certain for taxicab  
24 licenses and certain circumstances, subject the creation of the security interest in certain  
25 taxicabs and the requirements of the Maryland Uniform Commercial Code and generally  
26 amend the law governing the insurance of transfer of taxicab licenses.

27 Persons wishing to submit additional material for the Council's consideration should do so  
28 before the close of business October 9, 2008.

29 A transportation, infrastructure, energy and environment committee work session is  
30 tentatively scheduled for October 13th at 9:30. Please call 240-777-7900 for information.

31 We have several speakers for this hearing. And our first speaker is Arthur Holmes,  
32 representing the County Executive.

33 Good afternoon.

34  
35 ARTHUR HOLMES: Good afternoon.

36 As you indicated, I'm Art Holmes, Director of the Department of Transportation.

37 And I'm here representing the County Executive Isiah Leggett.

38 Thank you for the opportunity to present testimony on Bill 30-08.

39 The County Executive request this legislation to give the Director of the Department  
40 discretion to waive the transfer of restrictions to allow a fleet, to transfer more than two  
41 taxicab passenger vehicle license, PVLs, per year to individuals for good cause.

42 It also subjects the creation of a security interest to the requirements of the Maryland  
43 Uniform Commercial Code.





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1 ROGER BERLINER: Director Holmes, you and I have had a number of conversations with  
2 respect to this topic, so it won't come as any surprise to you that I continue to be a skeptic  
3 with respect to the authority which you seek here.

4 In our conversations, I likened it to the \$700 billion bailout bill that was initially proposed in  
5 the Congress and which they said, "Give us \$700 billion and just trust us. We'll do it  
6 right."

7 I don't for a moment doubt the need for our county to restructure our taxi fleet and the  
8 system under which it is operating.

9 And I would suggest to you that I am one that is prepared to engage in that conversation  
10 and have you and for you to give us your recommendations as to how our system should  
11 be restructured.

12 And at that point in time, this council would take those recommendations and act on them  
13 and move forward.

14  
15 ARTHUR HOLMES: We certainly plan to do that and I believe that we're going to have  
16 committee deliberations on the 13th and we will then look into, I'm sure, certain, other  
17 alternatives.

18 Our position is that we want to make sure, one, the customer and we have customer  
19 satisfaction that can carry out such things as Medicaid responsibilities and that we have a  
20 system that has some regulatory structure.

21 So, that will be the way that we will be working.

22  
23 ROGER BERLINER: I support you and both of those objectives and believe that we can  
24 find a means by which we can do that and make the decisions in public that need to be  
25 made and then for you to carry that forward as you deem appropriate with respect to  
26 Barwood and every other participant in our taxi fleet.

27  
28 ARTHUR HOLMES: I would just indicate to you that what we are saying here about the  
29 transfers would be something we could do across the board.

30  
31 ROGER BERLINER: I understand that you have the discretion to do so.  
32 And with the greatest respect, I don't believe this should a matter of discretion.  
33 I believe we ought to look seriously at the structure of our industry and decide what it  
34 should look like, what they should be permitted to do and go forward and do it.

35  
36 ARTHUR HOLMES: It will be that.

37  
38 ROGER BERLINER: All right, sir.

39  
40 PHIL ANDREWS: Thank you, Director Holmes.

41  
42 ARTHUR HOLMES: Thank you.



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1 PHIL ANDREWS: Any other questions?  
2 Now, I'll call up Group B, which is Robert Jango, Mike Healey, David Mohebb, Lee Barns,  
3 Retha Arens, and Dwight Kines.  
4 Please turn on the button when you speak and introduce yourself for those who are  
5 listening in.  
6 Each speaker has up to three minutes.  
7 And if the buzzer goes off when you're still speaking, just complete your sentence please.  
8 The first speaker will be Robert Jango.  
9 Would you rather--yes, you do not have to speak.  
10 Come on up.  
11 Oh, well, in that case, go look for the glasses.  
12 We will make an exception for that.  
13 You found them?  
14 Good.  
15 All right.  
16  
17 ROBERT JANGO: It's nice to see you all.  
18  
19 PHIL ANDREWS: Nice to see you  
20  
21 ROGER BERLINER: Without your glasses, you can say that.  
22  
23 PHIL ANDREWS: Okay, go ahead and push the button in front of you and introduce  
24 yourself please.  
25  
26 ROBERT JANGO: My name is Robert Jango.  
27 I am [INDISTINCT] part of ride-a-taxi LLC.  
28 And I have here, these are just some of it, but it's okay.  
29 It was established in 2006.  
30 We have attempted to get PVLs and--or attempt to get PVLs now--we would prefer like  
31 the first question, we wanted to have the executive to conduct a mediation and participate  
32 in the mediation that way.  
33 We have come up with a plan that is exactly like the [INDISTINCT].  
34 It's within the code.  
35 And we can afford to buy licenses from Barwood at reasonable cost.  
36 We can't.  
37 Everything is within the code.  
38 We can do it now.  
39 We have deep pockets to be able to finance it.  
40 We have a company that--taxi companies make money by slowing service and this is  
41 something that we spoke to with [INDISTINCT].  
42 He admitted that this is true and that the taxi companies should just keep it low key.  
43 But they make money by slowing service.



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1 That's how it's done.  
2 We are going to do the exact opposite.  
3 Drivers are going to make upwards \$70 to \$100,000.  
4 We will create millionaires.  
5 Licenses will go up.  
6 We're talking about creating a \$5 to \$10 million garage.  
7 It could help the county with its buses and move into other areas.  
8 This is something that the Taxi & Limousine Fleet Association, a very, very powerful  
9 association in the United States with local chapters, it's very powerful, very nasty and,  
10 frankly, very corrupt.  
11 We've gotten calls from them about that often.  
12 I was shot myself.  
13 So, luckily, I lived.  
14 I am going through a withdrawal now, but I was shot in the face twice.  
15 The other thing is, like I said, we can do this--I'm sorry I don't have my paper--but we can  
16 do this within the code.  
17 We don't have to change any regulations or anything like that.  
18 Like I said, we have deep pockets and we are ready to go.  
19 Hi, George.  
20 You're still alive.  
21 How are you doing?  
22 I was thinking...  
23  
24 GEORGE: Yeah?  
25  
26 ROBERT JANGO: I'm finished.  
27  
28 GEORGE: Both taking shots to the face, but we are both still walking and talking.  
29  
30 ROBERT JANGO: Yeah, I'm going through withdrawal now.  
31 It's horrible.  
32  
33 GEORGE: Well, it's good to see you here.  
34  
35 ROBERT JANGO: Thank you.  
36  
37 GEORGE: You look well. Okay.  
38  
39 ROBERT JANGO: Thanks.  
40  
41 PHIL ANDREWS: Why don't you, when you get a chance, why don't you type up your  
42 testimony and submit it?  
43





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1 ROBERT JANGO: I will. Fifteen copies, you said?

2  
3  
4 PHIL ANDREWS: That will be fine.

5  
6 ROBERT JANGO: Look, I got to go.

7  
8 PHIL ANDREWS: Thank you, and please stay at the table, there maybe questions for you.

9  
10 ROBERT JANGO: Okay.

11  
12 MIKE KNAPP: All right, our next speaker is Mike Healy.

13  
14 MIKE HEALEY: All right, thank you. My name is Michael Healy.

15 I am currently the general manager for Regency Cab and I have nearly a 30 years  
16 experience in the local taxicab industry.

17 I wish to voice my concerns about this bill as it is presently written.

18 This bill could result in a competitive advantage being provided to the company that  
19 currently has approximately 70% of the taxicab licenses.

20 The problem with the current bill is that it would allow Barwood to offer drivers an  
21 opportunity to own and operate their own PVL.

22 This is a very attractive incentive to individuals that have made a commitment to the taxi  
23 industry as their livelihood.

24 Veteran drivers are going to transfer from other companies to Barwood for this opportunity  
25 because the other companies are not going to be able to offer the same opportunity to  
26 them, the same offer.

27 There is a clear possibility of a dramatic shift of personnel from other companies to  
28 Barwood.

29 The effect of this bill on the other companies would entail a loss of drivers.

30 Faced with a higher turnover, you are going to have a less experienced and  
31 knowledgeable fleet of drivers.

32 There will be a decrease in the quality of customer service, will have an increase  
33 recruitment and training cost and time and a loss in company revenue due to a decrease  
34 in taxi rental.

35 Each of the other companies face the same economic and operational challenges that  
36 Barwood faced over the past several years.

37 However, Barwood, due to its size, did have the advantage of an economys of scale  
38 savings.

39 It would be unfair and anticompetitive to provide the largest company an additional  
40 competitive advantage in a regulated environment.

41 My second concern about this bill is that it grants discretion to the director without  
42 adequate criteria or definition of what good cause is.



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1 Without defining good cause, it could result in two similarly-situated fleets being treated  
2 differently.

3 Potentially, it would result in an uneven playing field and turn into a competitive advantage  
4 for one fleet.

5 For these reasons, I ask that you change Bill 30-08 to address these concerns and I do  
6 thank you for this opportunity to testify.

7  
8 PHIL ANDREWS: Thank you.

9 David Mohebb.

10  
11 DAVID MOHEBBI: Good afternoon.

12 My name is David Mohebbi, President of Regency Cab, also a member of Taxi Service  
13 Advisory Committee to the County Executive, also a member of TLPA.

14 At a time when our country is facing an unprecedented economic uncertainty, the last  
15 thing you would want to do is to create uncertainty at local level.

16 Bill 30-08 in its current language is creating a large amount of uncertainty.

17 It will give the total discretion to the director to judge the good cause without any  
18 guidelines.

19 Since this bill is designed to help Barwood in its bankruptcy, so the only proved good  
20 cause at this point is bankruptcy, setting a bad precedent declaring to the other fleets the  
21 shortest way to get the same treatment is to file bankruptcy.

22 Regency and two other small fleets, together, roughly own about 24% of the 650 taxis in  
23 Montgomery County.

24 These are smaller fleets.

25 We're born over the last 20 years as a result of Montgomery County Department of  
26 Transportation's vision to create competition in these crucial service business in our  
27 community.

28 Montgomery County Department of Transportation, hand-in-hand with private investors,  
29 has been able to create a regulated, convenient and safe taxi service in our community.

30 We realize that taxicab service industry in our community is at its infancy to become a  
31 competition-driven taxi service.

32 In this infancy, any adverse or unintended consequences could set the county back in its  
33 goal to achieve competition.

34 Understanding our role in our community has allowed Regency Cab to thrive constantly  
35 and be a part of the solution rather than being a part of the problem for our government  
36 and our community.

37 Regency believes Bill 30-08 in its current language does not support the main goals of  
38 Montgomery County government.

39 This Bill, as it stands, not only will not help the competitiveness in the industry but also  
40 may have the adverse affect of tipping the current fragile balance in favor of the strongest  
41 of the fleets.

42 We suggest that in considering this Bill, the council should pay attention to the following.



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1 One, help the competitive environment by allowing the smaller companies to grow their  
2 fleets in size.

3 Number two, acknowledge that drivers and human resources are essential part of this  
4 manpower-intensive service industry.

5 Please note that every PVL has only value if there is a qualified driver operating that PVL.

6 Number three, help maintain a level playing field for all fleets.

7 At the end, in front of you, we want to once more assure the Montgomery County  
8 Executive and the Council that Regency's commitment to your goals to provide the best  
9 transportation service to our county residents.

10 We would also want to restate our passion for our contribution we are making to our  
11 disabled and elderly community, our sense of pride and yet humbling role we have  
12 achieved in providing this crucial services in Montgomery County.

13  
14 PHIL ANDREWS: Thank you for your testimony.  
15 Our next speaker is Lee Barnes.

16  
17 LEE BARNES: Thank you members of the County Council and, Mr. Knapp, president, just  
18 came in.

19 I'm here to speak in support of the Bill.

20 I'm Lee Barnes of Barwood Incorporated.

21 I'm here to speak in support of Bill 30-08.

22 As Director Holmes mentioned, Barwood was forced to file for bankruptcy protection after  
23 the entry of a judgment in the District of Columbia as a result of an automobile accident.

24 That event exposed a flaw in Chapter 53.

25 Prior changes in 2004 to Chapter 53, made, there was a restriction on the sale of license.

26 And a fleet faced with an event like a huge judgment would have had the ability to raise  
27 some capital through a sale without the need to seek bankruptcy protection, but that was  
28 changed in 2004 when the restriction of two licenses per year if we could sell to  
29 individuals.

30 That ability, as I said, was taken away, so that when we were faced with the judgment, we  
31 had no alternative but to seek protection and have the ability to sell our assets.

32 This Bill, 30-08, fixes the flaw from the previous bill of 2004.

33 We want to thank the Department for recognizing the issue and taking steps to solve the  
34 problem not only for Barwood but for the entire industry.

35 This bill will ensure that when another fleet is unfortunate enough to face such a  
36 circumstance, it will be able to address its crisis without the added difficulty of filing for  
37 bankruptcy--which I can assure you is not a competitive advantage.

38 I want to thank you all for the opportunity today to present testimony in support of this and  
39 ask for a favorable response from the Council.

40  
41 MIKE KNAPP: Thank you very much.

42 Our next speaker is Retha Arens, representing Action Taxicab.



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1 RETHA ARENS: Good afternoon.

2 My name is Retha Arens and I'm speaking on behalf of Action Taxi, which is the third  
3 largest fleet in Montgomery County.

4 We welcome the opportunity to provide comments to Expedited Bill 30-08.

5 This bill, it's been said, gives the Director of Transportation the authority to waive the  
6 limitations in Chapter 53 to allow license transfers from a fleet--in this case, Barwood--to  
7 individuals.

8 To emerge from bankruptcy, as you just heard Lee say, he needs the ability to sell some  
9 of his PVLs, and Bill 30-08 as intended to allow that result.

10 However, Action Taxi is very concerned that this Bill will result in only one fleet having the  
11 right to sell PVL's, which will cause serious unintended consequences for all the other  
12 fleets and the riding public.

13 Over the last 20 years, Montgomery County government led by this council has worked  
14 very hard to increase competition by facilitating the formation of fleets to compete with  
15 Barwood.

16 Action Taxi was created in the first wave of this expansion 19 years ago.

17 The rewrite of Chapter 53 was premised on improving customer service and increasing  
18 competition by allowing new licenses which has led to a new fleet in the county.

19 These smaller fleets allow customer choice and provide superior customer service.

20 The County Executive recognized the need to preserve competition and protect customer  
21 service in its memorandum that accompanied this bill.

22 However, this Bill as structured fails these two goals.

23 An unfair competitive advantage will be given to Barwood to offer PVL ownership to  
24 drivers.

25 The other fleets will not be able to offer the same incentive to their drivers.

26 This will lead to the migration of drivers, especially experienced drivers, from the other  
27 fleets to Barwood as they seek to own their own part of the American dream.

28 Bill 30-08 is effectively punishing the fleets that up to this point have been better able to  
29 manage their companies.

30 If Action Taxi cannot compete with Barwood by offering our drivers the same opportunity  
31 to own their own PVLs, we will lose them.

32 This loss of drivers which are going to be very hard to replace and, perhaps, impossible to  
33 replace, is likely to destroy our company, destroy competition and, eventually, destroy a  
34 customer choice.

35 Action Taxi asks that the Council amend Bill 30-08 so that if Barwood is granted a waiver  
36 to sell its PVLs, that we be allowed that same opportunity at the same time without being  
37 forced into bankruptcy first.

38 Thank you.

39  
40 MIKE KNAPP: Thank you very much. Mr. Kines?

41  
42 DWIGHT KINES: My name is Dwight Kines and I'm here today as a representative of Sun  
43 Cab, Montgomery County's newest taxicab company.



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1 We're the green ones.

2 We're owned by Veolia Transportation-on-Demand, which is a division of a huge  
3 international company and we also operate large taxi cab companies in probably half a  
4 dozen cities around the United States, along with Super Shuttle, The Blue Van and  
5 Executive Car Services.

6 And although we only have about 25 taxicabs right now, we're very happy to be here in  
7 Montgomery County and look forward to growing our local operation.

8 I'm here to voice some concerns about Bill 30-08.

9 Although we are in a growth mode and at this point have no interest at all in purchasing  
10 PV--or selling, I'm sorry, selling PVLs--at this point, we're concerned about retaining our  
11 current driver base if another company is allowed to sell them.

12 In its current form, the Bill does not guarantee a level playing field for other taxi operators  
13 if these sales are allowed by only one company.

14 Our drivers that are in the cab business for the long term--in other words, our best cab  
15 drivers--would definitely move to another company if a PVL was offered there.

16 Unlike the short-term drivers, they will make the investment in a PVL and a vehicle  
17 because it's the financially prudent thing to do.

18 In fact, we've had several drivers approach us in the past month about opportunities to  
19 acquire a PVL.

20 Without the ability to defend ourselves by offering a PVL to our existing drivers, our good  
21 drivers will leave and we will be left with the challenge of providing safe and reliable  
22 transportation to our customers without our top-notch drivers.

23 We understand the situation of Barwood and the county's desire to maintain stability in  
24 taxi service.

25 We also very much appreciate the fact that you have worked with them to come up with a  
26 solution that attempts to get them back on solid ground without having the service to our  
27 citizens interrupted.

28 We only ask that you give the smaller companies the opportunity to defend ourselves from  
29 a potentially large migration of our drivers to another company by allowing us to offer  
30 PVLs.

31 One other point I'd like to make is that we feel that creating owner operators is a good  
32 thing for the industry and not our customers.

33 In other areas, Veolia has found that owner-drivers, because of their investment, are safer  
34 drivers, keep their vehicles in good mechanical condition and are easier to discipline in  
35 many cases because they have something to lose.

36 In fact, Super Shuttle, as I said, a sister company of ours, uses a similar model with their  
37 franchisees--and these are some of the best-looking vans on the streets.

38 So, the owner-operator model does work.

39 Unlike the short term fleet driver who can move from one company to another before  
40 deciding he doesn't want to drive anymore and quits completely, the owner-operator will  
41 make big picture decisions more often.

42 So, you don't need to be concerned about a drop in service levels as we move to the  
43 owner-driver model from what I've seen.



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1 Thank you.

2  
3 MIKE KNAPP: Thank you very much.

4 We have a couple questions, Councilmember Berliner?

5  
6 ROGER BERLINER: Mr. Barnes, I appreciate you're here speaking on behalf of this  
7 legislation.

8 When you and I met, we discussed the possibility of trying to do this in an alternative way  
9 which is for us to have the conversations I believe you had been having previously with  
10 the executive branch with respect to what should the structure of this industry be such that  
11 if we find that structure, it would be equally applicable for all the people sitting at this table.  
12 Do you object to that approach as an alternative to this measure?

13  
14 LEE BARNES: I don't object to it.

15 I have a timing issue for me and, so, whenever I'm here I'm dealing with the timeline of  
16 another court.

17 But there are many different other models around the country.

18  
19 ROGER BERLINER: There are different models that we could.

20 Assuming for purposes of this conversation that I don't share your view that this body has  
21 an obligation to act because of your court deadlines, you would not be adverse to us  
22 exploring in an accelerated timeline a restructuring of the industry as a whole that would,  
23 in fact, in the end provide relief to you in some manner or more economic opportunities to  
24 you with respect to your PVLs?

25  
26 LEE BARNES: Other than that we had spent before, it took a whole year to get it  
27 restructured and, so the word "accelerated" is maybe somewhat of an oxymoron when it  
28 comes to a process such as that.

29  
30 ROGER BERLINER: I do appreciate that, but I think you've heard from your competitors  
31 and others that it is very difficult for us to figure out how we could do something that  
32 appears to be for you, if you will, when the ripple effects, the fundamental competitive  
33 effects are so profound that, in effect, anything that is done for you would have to be done  
34 for everyone and, therefore, we would be ceding to the executive branch the authority in  
35 my judgment to restructure this industry under the cloak of bankruptcy when in fact I  
36 believe we should just be doing this as a matter of good public policy.

37 And that's my preference, but I wanted to make sure that you had no objections to that  
38 other than your own need to make particular filings as it pertains to your bankruptcy  
39 situation.

40  
41 LEE BARNES: This bill can be passed and you can still reexamine and restructure the  
42 industry just as the history shows us, so that doesn't change that whatsoever about that.



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1  
2 ROGER BERLINER: I appreciate it.

3 It could also be not passing, we could still revisit the questions of the restructuring, all  
4 right.

5 When this panel is done, if I could, I wanted to ask a follow-up question that I would have  
6 asked to Director Holmes.

7 He had to leave quickly and with the Chair's forbearance, I'd like to ask Carolyn Biggins a  
8 follow-up question if I could before ceding my time, if that's all right with the Council  
9 President.

10 Carolyn, could you come up for a moment?

11 Carolyn, my understanding is that at this moment in time, you are considering issuing  
12 additional licenses, is that correct?

13  
14 CAROLYN BIGGINS: We are.

15 We have out on the street the 2008 issuance for the fleets and then we also had  
16 previously done the individual as well.

17  
18  
19 ROGER BERLINER: Okay, in light of these conversations, I need to understand better  
20 why that is appropriate for you to be going forward in this particular context with issuing  
21 more?

22 It maybe something that everybody thinks is fine, but in the context of restructuring the  
23 entire industry, the notion of going forth and issuing additional licenses particularly when  
24 there are those of us that believe our additional licenses should be auctioned in the same  
25 manner as which the private sector is seeking to do, I am a little concerned about issuing  
26 additional licenses at this moment in time and I would appreciate it if you would do a  
27 follow-up with the committee and explaining why it is, in this moment in time, this still  
28 seems to be inappropriate.

29  
30 CAROLYN: Sure, we can do that.

31  
32 MIKE KNAPP: And this comes back to the committee, the one on the 13th, so, next week,  
33 so, it's the information you're seeking for y our committee.

34  
35 ROGER BERLINER: It is indeed.

36  
37 MIKE KNAPP: Okay.

38  
39 ROGER BERLINER: Thank you.

40  
41 MIKE KNAPP: Councilmember Elrich?

42  
43 MARC ELRICH: How many licenses you're thinking about issuing?



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1  
2 CAROLYN: We have 65, right?  
3 Sixty-five licenses.

4  
5 MARC ELRICH: And we would sell them for how much?

6  
7 CAROLYN: We have a license [INDISTINCT].  
8

9 NANCY KUTZ: Each even-numbered calendar year, we can issue 10% of the current  
10 licenses. We have 650 now, so 65 are eligible to be issued.  
11 And out of those, 20% have to be issued, or awarded to individuals and the rest to fleets.  
12 And the individual licenses cost \$5,000 to placement service for the PVL and each fleet  
13 license I believe is \$2,500.  
14

15 MARC ELRICH: So when we're talking about--so I'm clear if someone was allowed to sell  
16 their PVLs, are they converting fleet licenses to PVLs or have fleets required of PVLs  
17 complete licenses?  
18

19 NANCY KUTZ: Fleets would apply for a fleet license, but if a fleet wanted to transfer their  
20 license, it would be \$2,500 to transfer.  
21

22 MARC ELRICH: To an individual?  
23

24 CAROLYN BIGGINS: To an individual, correct.  
25

26 MARC ELRICH: And that would be a PVL?  
27

28 NANCY KUTZ:: That would be a PVL, yeah.  
29 And we had talked about auctioning licenses at one point when we were revising the code  
30 and I see--I wish George is still sitting here--Nancy, I don't see Nancy, but we don't  
31 auction licenses like they do in New York.  
32

33 MARC ELRICH: But if the license were transferred, is there a transfer difference between  
34 the fleet rate and the individual rate?  
35

36 NANCY KUTZ:: It's just per license.  
37 There's no difference between fleet and individual.  
38

39 MIKE KNAPP: I want to... hold on.  
40

41 NANCY APPEL: I'm sorry.  
42







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1 MARC ELRICH: For the other cab businesses that testified, how rapidly do you think you  
2 would feel an effect where the council were to move on this legislation enabling Barwood  
3 to sell licenses?

4 How quick would you feel that?

5  
6 DAVID MOHEBB

7 i: I'm David Mohebbi, again, president of Regency Cab, the second largest company in  
8 the county.

9 I think that the effect would be immediate.

10 As you know, when these licenses become available for sale, it won't be Warren Buffet  
11 rushing down here to buy them.

12 It will be the existing drivers who drive for me.

13 Majority of them are veteran, experienced drivers who would invest in this business.

14 They will be migrating immediately to Barwood to buy their own their own business,  
15 causing my business to shut down or at least half of my fleet to be parked and I have to  
16 go and hire rookies who come to this business for transitional work working three months  
17 until they're looking for another job.

18 We have been able to manage to gather a hundred of the best drivers in the county and  
19 we have been able to raise to a level to compete with Barwood all over the county.

20 Not only in the northern part but all over the Montgomery County, we are competing with  
21 Barwood neck to neck and it's crucial to our existence to be given these additional  
22 licenses that the county's putting out this year because it will allow us to grow to the level  
23 to be able to compete with Barwood even better.

24 If you don't put the licenses out, then you have all these illegal taxis.

25 They call themselves sedans who are working currently at our business centers and our  
26 hotels picking up people in uninsured vehicles and unlicensed vehicles that we've been  
27 constantly in contact with Montgomery County Department of Transportation and the  
28 police trying to hamper their level, but because the number of taxis that are available are  
29 not enough, people have to get around in those vehicles.

30 Barwood's vehicles are not all on the road because of its bankruptcy.

31 They have 80 to 100 parked, so, they're not efficient enough number of taxis out there.

32 And we're not in bankruptcy.

33 We can get these cabs and put them on the road and provide these services that the  
34 county needs.

35  
36 RETHA ARENS: I'd like to go back to your previous question.

37 The fleets have gotten their licenses by a combination of buying individual licenses over  
38 the years, also getting licenses through the county system, investing in their business.

39 Regency was bought with private money.

40 Action, the owner of Action has invested hundreds of thousands of dollars.

41 Another way to look at this: when you give a liquor license to a restaurant and that  
42 restaurant later changes hand and they approve a new liquor license, that liquor license is  
43 worth something.



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1 So the idea of trying to auction or take back what the value of the fleets and the industry is  
2 put into this business is really not a good way to restructure.

3 If there's not some reward at the end of the day for everybody to do this, no one's going to  
4 want to stay in the taxi business because, as it is, it's not a profitable or very profitable  
5 business as the way it's set up.

6 And if you take away any possibility of getting your investment back, perhaps making a  
7 little of the investment, that's just absolutely could destroy this industry.

8  
9 MIKE KNAPP: Councilmember Leventhal, do you have a question?  
10 Councilmember Leventhal?

11  
12 GEORGE LEVENTHAL: Okay, what I wanted to just do is to--I mean these public  
13 hearings are an opportunity for many of us to really delve into the issue and get our minds  
14 around it for the first time--I want to ask the staff and my friend, the chair, The T & E  
15 Committee is out working on another issue, but, if, You know, if she agrees to this--and I  
16 hope the staff will provide the T & E Committee members with some thoughtful analysis--  
17 this is the staff I'm talking to now--several of the points that are raised here some  
18 threshold questions.

19 I'm not asking these questions here because they're pretty sensitive and I don't know that  
20 we know the answers to them, okay?

21 I heard Retha's suggestion that if you're going to grant a waiver to one operator, that all  
22 operators ought to have a similar waiver and ought to be able to have access to more  
23 licenses.

24 So, what would be the effect of that?

25 The threshold question--which is what is the effect of addressing one operator's  
26 bankruptcy crisis on other operators?

27 We obviously want to look at the entire market and sort of speculate, spin out.

28 If "A", then what?

29 If you do this, what happens next?

30 And then finally--and again I'm not asking the question now because it's very sensitive--  
31 but what is the effect if a major operator goes out of business, no longer exists?

32 Are other operators able to fill the gap or are Montgomery county residents left without taxi  
33 cab service?

34 So, I'm not asking for answers to these questions right now, but sometimes we get this  
35 very complicated issues and I know the staff is very busy as well with sort of "Here's the  
36 bill, here's what it does," instead of "Here are the effects if you vote for this, here's what  
37 happens."

38 And I really would like some thoughtful and informed--and obviously you're going to work  
39 with the executive branch to do the speculation--but what do we reasonably think are the  
40 outcomes of taking these steps, because we've heard one operator appeal to us saying,  
41 "Please grant...?"



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1 And let's be clear, we're not bypassing this bill if we do pass this bill as introduced,  
2 necessarily stating what the impact is going to be for any operator or for any number of  
3 licenses.

4 We're just granting to the director greater discretion than he has today.

5 That's all we're doing.

6 So the same set of issues I'm asking presumably even if we pass the bill as introduced,  
7 the director would have to measure and weigh the various impacts.

8 We want a competitive taxi cab industry.

9 That was the goal of passing the bill that we passed a few years ago.

10 It seems like there is a little more competition than there was prior, but we want a  
11 competitive taxi cab industry.

12  
13 So, if that's our goal, then depending on how the director uses this authority, what is the  
14 effect on that goal?

15  
16 MIKE KNAPP: Final question for this panel, Councilmember Berliner?

17  
18 ROGER BERLINER: I wanted to follow up on what I understood to be Retha's  
19 observations with respect to auctioning.

20 I just want to make sure I understand your point.

21 If the county were to auction these licenses initially, are you saying that that would have a  
22 significant detrimental effect on your financial situation--I just want to make sure I  
23 understood--as opposed to allowing you to also the right auction what you hold?

24  
25 RETHA ARENS: I don't think there would be a reason--the way the code is structured--if  
26 they were auctioned, I don't think there would be a reason to buy very many because right  
27 now a fleet is limited to selling two a year or if you can sell your whole fleet.  
28 Selling your whole fleet when you have 40 to 50 or 100 cabs is very difficult.

29  
30 ROGER BERLINER: Assume with me for purposes of this conversation that you had a lot  
31 of flexibility in your own ability to sell licenses, okay?

32  
33 RETHA ARENS: Well, I don't think in the case of Action they can afford to play in the  
34 auction field to buy licenses at \$40,000-\$60,000, you know.  
35 That--it would be very difficult.

36  
37 DAVID MOHEBBI: Mr. Berliner, if I may answer that question--just by auctioning these  
38 licenses and getting \$30 or \$40,000 for them, it doesn't mean you get the best group to  
39 give you the service for the public.

40 Your county might make in a short-term a little bit of money but in the long-term you would  
41 not receive the same service.

42 If you give it to the fleets who currently have proven themselves, we invested \$2 million  
43 dollars in the Regency in the last seven to eight years.



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1 Last year alone, we put in \$500,000 of our own additional money.  
2 We're planning with these new licenses with another \$500,000.  
3 We're constantly putting money in this company because we believe in the future of our  
4 county.  
5 We have met with you twice in the last 60 days in improving to the hybrid vehicles and  
6 other reasons to improve the system for our community.  
7 I have worked in this community for 30 years in this industry and I have nothing in mind  
8 other than the best for our county.  
9 I also want to challenge the transportation which provides the metro access in  
10 Montgomery county, and we are constantly covering the need of our elderly and the  
11 wheelchair-people in the county.  
12 Now, you provide those in an auction, maybe a rich guy come, maybe Warren Buffet  
13 would show up and buy them, but would he be able to provide the service that Regency or  
14 Action or Sun Cab would?  
15 No, because we have the experience.  
16 We have put money, our investment here.  
17 Now, even when you give us these licenses at no charge, at \$2,500 that we pay, we have  
18 to turn around and put \$500,000 to buy the vehicles and put everything else on them--  
19 radio, meters and everything, train the drivers, hire the divers and put them in these  
20 vehicles.  
21 They do not come for free.  
22 They are still a cost to us almost at an average of \$30,000.  
23 Now you add another 30 to that for the auction, that will be a market value I can go out  
24 and buy from prior owners.  
25 I don't have to wait for the county to provide them to me.

26  
27 ROGER BERLINER: Thank you.  
28 I appreciate the feedback.

29  
30 MIKE KNAPP:> There are no more questions?  
31 This concludes this public hearing.  
32 Thank you very much.  
33 We will now turn to district council session.  
34 We have before us four actions.

35  
36 MIKE KNAPP: Need to wait for staff. All right, we're just waiting for Mr. Zyontz.

37  
38 [INDISTINCT]

39  
40 MIKE KNAPP: Okay, we have before us, first, is Action - Request for Withdrawal of Local  
41 Map Amendment, Application Number G-341.  
42 I turn to...



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1 JEFF ZYONTZ: This is just a simple request for withdrawal.  
2 The council was responsible for acting on these requests.  
3 It's not something that the hearing examiner has the authority to do on her own initiative.  
4 So we're here at the request of the applicant to withdraw.  
5

6 MIKE KNAPP: Do we need a roll call?  
7 Or can we just decide as a majority vote?  
8

9 JEFF ZYONTZ: I think you should do a roll call.  
10

11 MIKE KNAPP: Okay.  
12 Do I see any comments?  
13 further discussion?  
14 I don't see any.  
15 Madam Clerk, if you would call a roll?  
16

17 CLERK: Mr. Elrich?  
18

19 MIKE KNAPP: Oh, we lost him.  
20

21 UNIDENTIFIED SPEAKER: I think that was a yes.  
22

23 CLERK: Praisner?  
24

25 DONALD PRAISNER: Yes.  
26

27 CLERK: Ms. Trachtenberg?  
28

29 DUCHY TRACHTENBERG: Yes.  
30

31 CLERK: Ms. Floreen?  
32

33 NANCY FLOREEN: Yes.  
34

35 CLERK: Mr. Leventhal?  
36

37 GEORGE LEVENTHAL: Yes.  
38

39 CLERK: Ms. Ervin?  
40

41 CLERK: Mr. Berliner?  
42

43 ROGER BERLINER: Yes.



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1  
2 CLERK: Mr. Andrews?

3  
4 PHIL ANDREWS: Yes.

5  
6 CLERK: Mr. Knapp?

7  
8 MIKE KNAPP: Yes.

9 The request for withdrawal of local map amendment, Application G-341, is approved by  
10 eight council members present.

11 We now turn to Item B, Action - Request for Withdrawal of Local Map Amendment,  
12 Application Number G-867.

13 Anything else?

14  
15 JEFF ZYONTZ:: No.

16 The same situation essentially that applicant requested to withdraw.

17  
18 MIKE KNAPP: Okay.

19 Madam Clerk, if you would call a roll for the--call the roll for the request for withdrawal of  
20 local map amendment?

21  
22 CLERK: Mr. Elrich?

23  
24 MARC ELRICH: Yes.

25  
26 CLERK: Mr. Praisner?

27  
28 DONALD PRAISNER: Yes.

29  
30 CLERK: Ms. Trachtenberg?

31  
32 DUCHY TRACHTENBERG: Yes.

33  
34 CLERK: Ms. Floreen?

35  
36 NANCY FLOREEN: Yes.

37  
38 CLERK: Mr. Leventhal?

39  
40 GEORGE LEVENTHAL: Yes.

41  
42 CLERK: Ms. Ervin?



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1 VALERIE ERVIN: Yes.

2  
3 CLERK: Mr. Berliner?

4  
5 ROGER BERLINER: Yes.

6  
7 CLERK: Mr. Andrews?

8  
9 PHIL ANDREWS: Yes.

10  
11 CLERK: Mr. Knapp?

12  
13 MIKE KNAPP: Yes.

14 The withdrawal of local map amendment is approved unanimously.

15 We now turn to Item C, Action - Consideration of the Hearing Examiner's Report and  
16 Recommendation for Application Number G-865.

17  
18 FRANCOISE CARRIER: This is a case the applicant is requesting two things.

19 They have an existing approved development plan for a part property at the corner of  
20 Arlington Road in Bethesda, and they want to extend that zone, the TSR Zone, into an  
21 addition lot and add that lot to the existing development plan.

22 This would allow them to build a larger building.

23 They also would like to change it from partly office, partly residential to all residential.

24 It did face some opposition in the community.

25 It was recommended for approval by the planning board and the technical staff.

26 I have also recommended approval.

27 The chief opposition to the case was based, there were some based on sector plan  
28 grounds, depending on how closely one interprets the sector plan language.

29 I felt that it was substantially in compliance with the master of the sector plan.

30 There were others who, particularly the Montgomery County Civic Federation, who felt  
31 that a more--one should adhere more closely to the exact language of the sector plan.

32 There was also opposition from some adjoining neighbors who don't want a bigger  
33 building next door essentially.

34 And I agreed with technical staff and the planning board that this building, as proposed,  
35 would be consistent with a vision for the area that the sector plan put forward and  
36 consistent with--... that any kind of impacts on the adjoining neighbors would be basically  
37 consistent with urban living.

38  
39 MIKE KNAPP: Okay.

40  
41 FRANCOISE CARRIER: And I'll be happy to answer any questions you may have.

42  
43 MIKE KNAPP: Is there a discussion,





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1 Councilmember Berliner?

2  
3 ROGER BERLINER: The opposition, I believe, the focus is really--we're a one-storey  
4 opposition issue here, we're not the difference between the third floor and the fourth floor?

5  
6 FRANCOISE CARRIER: Essentially, yes.

7 The neighboring, sector plan issue is focused on the number of stories because the sector  
8 plan recommends a height limit of 35 feet along Arlington Road in the stretch of Arlington  
9 Road and which is the TS recommended for this, the TSR District.

10 This building would be 35 feet along Arlington Road, but only for the first 10 feet and that  
11 is consistent with the building that was built right across the street and it's also consistent  
12 with an approval that the council gave in last year for a much larger building a little further  
13 down Arlington Road, which would also be 35 feet right along the frontage and then,  
14 within a short distance, would start rising up to be a taller building.

15 The technical staff found that--the idea was for buildings to be six stories at Woodmont  
16 Avenue and to get smaller stepping down to 35 feet along Arlington Road in order to  
17 provide for a sort of a transition to the nearby residential areas on the other side of  
18 Arlington--and technical staff came up with the interpretation some time ago that the step-  
19 down was satisfied as long as the part of the building right on Arlington Road was 35 feet  
20 even if the whole building wasn't at the 35-foot limit.

21 And the neighbors have the same objection, that they would like the building to be three-  
22 stories so that their building would be a little taller rather than the new building being  
23 slightly taller.

24  
25 ROGER BERLINER: All right.

26 And park and planning staff recommended approval with respect to this?

27  
28 FRANCOISE CARRIER: They did.

29  
30 ROGER BERLINER: Council staff had any view with respect to this?

31  
32 JEFF ZYONTZ: The council staff has no view.

33 Remember, in these types of cases, I have the part of a potted plant.

34  
35 ROGER BERLINER: And it's a role that you play so...?

36  
37  
38 MIKE KNAPP:: He just enjoys this brief respite to give him [INDISTINCT]

39  
40 ROGER BERLINER: But there was no request for all argument with respect to this matter.  
41 I just want to say publicly that from my perspective, if there are parties that oppose  
42 something and feel strongly with respect to it, I expect oral argument to be requested.



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1 FRANCOISE CARRIER: I was surprised that there wasn't one, frankly.  
2 I expected it.

3  
4 ROGER BERLINER: From my perspective, that's important to show how important  
5 something like this is or isn't to a community.  
6 If they want to fight for it, then they should be here fighting for it.  
7 Okay.

8  
9 MIKE KNAPP: I see no further discussion.  
10 We have before us consideration of the hearing examiner's report and recommendation  
11 for G-685.  
12 Madam Clerk, if you would call the roll?

13  
14 CLERK: Mr. Elrich?

15  
16 MARC ELRICH: Yes.

17  
18 CLERK: Mr. Praisner?

19  
20 DONALD PRAISNER: Yes.

21  
22 CLERK: Ms. Trachtenberg?

23  
24 DUCHY TRACHTENBERG: Yes.

25  
26 CLERK: Ms. Floreen?

27  
28 NANCY FLOREEN: Yes.

29  
30 CLERK: Mr. Leventhal?

31  
32 GEORGE LEVENTHAL: Yes.

33  
34 CLERK: Ms. Ervin?

35  
36 CLERK: Mr. Berliner?

37  
38 ROGER BERLINER: Yes.

39  
40 CLERK: Mr. Andrews?

41  
42 PHIL ANDREWS: Yes.



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1 CLERK: Mr. Knapp?

2  
3 MIKE KNAPP: Yes.

4 Hearing the examiner's report and recommendation is approved for Application Number  
5 G-865.

6 We now turn to item D, Consideration of the Hearing Examiner's Report.

7  
8 GEORGE LEVENTHAL: I do think it's important to state, just having reflected on it for a  
9 moment, Mr. Berliner is absolutely entitled to his point of view and anything that influences  
10 his point of view.

11 We've already cast the vote, but I don't want to make it appear from the record that it is  
12 the Council's view that after the written record has been compiled and a hearing has been  
13 held before the hearing examiner and neighbors have been heard and the hearing  
14 examiner has provided us with the report, that any neighbor who has a view should feel  
15 that the record is incomplete and, therefore, oral argument must be submitted.

16 I don't share Mr. Berliner's observation on that and, so, it is not the view of the County  
17 Council that any neighbor who has strong feelings about a matter before the hearing  
18 examiner should request oral argument.

19 That is not my view.

20 We have a process whereby testimony is taken, a written record is compiled and the  
21 neighbors ought to feel that that's a fair process in which they have their opportunity to be  
22 heard.

23 So, I understand the point that Mr. Berliner is making.

24 And there are times such as when the executive branch is requesting a special  
25 appropriation where you would hope they would show up for a public hearing.

26 I think this is somewhat different from that and I do think that we want--... what we want to  
27 convey to the public is, is that the hearing examiner process is a comprehensive process  
28 where neighbors are heard and where their views are included in the record.

29 So, I just, I did want to make that point for the record.

30  
31 MIKE KNAPP: Now, Thank you for that clarification.

32 I think Mr. Berliner would like further clarification.

33  
34 ROGER BERLINER: My only clarification would be that we obviously as a body have the  
35 right to determine whether or not to grant oral argument and we would only do so if we  
36 perceive in fact that there are to be a legitimate issue of controversy that warrant it.

37 In this instance, there was no request with respect to that.

38 So, from my perspective, in the absence of a request, in the absence of feeling like there  
39 was in fact a burning controversial issue that could not be resolved on the basis of the  
40 hearing record that that's something significant for our decision-making process.

41  
42 MIKE KNAPP: Thank you very much.

43 Mr. Zyontz?



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1  
2 JEFF ZYONTZ: Just as an agenda note, the resolution we passed actually dealt with both  
3 the...

4  
5 MIKE KNAPP: [INDISTINCT] just did C and D?

6  
7 COUNCILMEMBER JEFF ZYONTZ: Yes. It was a combined Items 9 and 10 in the  
8 resolution.

9  
10 MIKE KNAPP: Okay.

11 So, just to clarify that for the record, the council's previous action just addressed both Item  
12 C and Item D in our agenda, including action for consideration of hearing examiner's court  
13 and recommendation for development plan amendment DPA 07-3, in addition to  
14 Application Number G-865

15 Okay, great.

16 Thank you for your usual thorough job.

17 We appreciate that.

18  
19 UNIDENTIFIED SPEAKER: [INDISTINCT].

20  
21 MIKE KNAPP: No, we are not.

22 The council is going to take a brief 10-minute recess and then we will recommence at  
23 about 3:05, I hope, to address our final items for the day.

24 Okay, we're back.

25 Thank you all for bearing with us.

26 We have two items left for action today--Item 11 which is Sub-division Regulation Limit 08-  
27 03, Arts or Entertainment Use Validity Period--and then Item 12 which is Action for Zoning  
28 Text Amendment Number 08-15, Arts or Entertainment Use CBD zones.

29 We're going to flip flop those because the policy piece that drives the SRA is actually in  
30 the ZTA so we're going to have that discussion first.

31 This has been a subject of discussion for a while as it relates to ZTA for the Arts and  
32 Entertainment use.

33 The committee had a long discussion last week and made a series--the committee  
34 recommended the approval of 08-15 with the following amendments, including the  
35 following assignment of responsibility to the executive and planning board that the public  
36 facilities and amenities requirement are satisfied if the applicant conveys an appropriate  
37 amount of land or building spaces is accepted by the county and approved by the  
38 Planning Board for Arts and Entertainment use due to the two to one vote.

39 Councilmember Floreen opposing, added two more criteria for the executive to accept arts  
40 and entertainment space.

41 The land or floor area must be conveyed to the county before the start of the project's  
42 principal construction, and, B, any project requiring public funding must be in the CIP.



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1 And then our final modification included proposal made by Councilmember Praisner that  
2 would remove the police department's role in making pre-application decisions on  
3 pedestrian paths and would define criteria to indicate when a sector plan's  
4 recommendation for a mid-block pedestrian path is not required.

5 I will turn now to the councilmembers to see if they have any comments or questions.  
6 Councilmember Floreen?

7  
8 NANCY FLOREEN: Thank you, Mr. President.

9 You know, since the whole issue of how to handle economic development initiatives,  
10 rather unique and arise periodically in the course of county executive and council  
11 initiatives has come up.

12 I've been listening very carefully to the proposals of the various parties as to how best we  
13 address that problem.

14 And I listened very thoughtfully to the words of the planning board chair at our last PHED  
15 Committee meeting and went home and thought about it some more.

16 And I realized that this is a process, I think, that this council wants to take over.

17 The legislation that was sent to us basically permitted the county executive to make  
18 certain decisions that would drive choices down at the park and planning commission.

19 And as, of course, as a former planning board member, I was certainly sensitive to that.

20 But now as a councilmember, I'm more sensitive to the fact that this is the place where  
21 land use decisions rest basically.

22 The buck does stop here on certainly the zoning text amendments that we do, the  
23 subdivision work we do and Lord knows all the master plan work that we do.

24 We're the ones who set the policies.

25 And as I thought about the committee recommendations that we had left on the table after  
26 last week's PHED Committee, I thought that it would be more accurate to describe this  
27 council's ownership of the process with some different language.

28 So I've taken the liberty of working with staff to draft a substitute recommendation for the  
29 council to take up for the zoning text amendment.

30 And I've shared it with my colleagues on the PHED Committee, and I believe that this  
31 would become a substitute recommendation of the PHED Committee.

32  
33 MIKE KNAPP: I've looked at it.

34 I will just have for to--the benefit of the folks watching--Jeff, if you could just kind of  
35 articulate the difference between what Councilmember Floreen has indicated in her  
36 document relative to what the committee approved and I think then Councilmember Elrich  
37 and I could weigh in.

38 But from what I've seen, I'm comfortable but I want to make sure specifically that the  
39 [INDISTINCT].

40  
41 NANCY FLOREEN: Sure, and that's fine.

42 Let me just summarize.



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1 Basically, this has rather than leaving this entirely to the county executive's call, basically,  
2 the council would determine that it supports an initiative or it doesn't.  
3 If it supports an initiative, it would direct the planning board in a resolution to say that such  
4 an initiative satisfies the public use in amenities space requirements of any project.  
5 That keeps to the council its legal authority to address these kinds of issues.  
6 And, so, consequently, what this does is it amends the proposed legislation from the  
7 committee and would include language--it on page 7 and there's a typo...

8  
9 MIKE KNAPP: Page 7 of what you've just handed out.

10  
11 NANCY FLOREEN: Page 7 of what we've handed out, and there's actually a typo in the  
12 second line, but it basically says that we would make this call.  
13 The county council by resolution has recommended that the executive accept that's...

14  
15 COUNCILMEMBER BERLINER: A correction.

16  
17 NANCY FLOREEN: Just a language blurb there needs to be corrected--a conveyance or  
18 dedication of land or buildings space to accommodate arts and entertainment use.  
19 And we would say that we must find that the arts and entertainment use will have a  
20 positive economic revitalization or economic impact on the arts and entertainment district,  
21 provide an opportunity for public use and create unique cultural opportunities for the public  
22 in the arts and entertainment district.

23 Previously, the language that had been proposed had the county executive making that  
24 call.

25 And I think that as stewards of land use, of community and, frankly, of economic initiatives  
26 throughout the county--and I understand that there, this, there are several projects out  
27 there to which this might apply--I think it is appropriate for this council to make that call.

28 Attached to this then is a resolution to be introduced and to accompany this that would  
29 make these findings and we recommend to the county executive that it accept in a  
30 discrete case a portion of, a little land for arts and entertainment use for a music hall.

31 That would be a separate implementing action, but it would be independent in the county  
32 council's position as a supporter of economic development initiatives.

33 So that is not the same as dealing with the zoning law, but it is a policy determination as  
34 economic development arbiter in this case.

35 That is, I think, a significant re-balancing of powers that we own, that we have and that  
36 engage us.

37 Certainly, there is couple of project out there that's generated a lot of attention, this is not  
38 the only one, and the question is how we best serve the public with our transparent  
39 process that we have and the opportunity for public debate in this environment in  
40 resolving when there are differences in our zoning authority rather than elsewhere.

41 So that is my proposal fundamentally.



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1 To my colleagues here, I'm sure I've left out a few comments that need to be made, but  
2 that's the fundamental issue of reserving to the council the authority to make these  
3 decisions.

4  
5 MIKE KNAPP: Anything to add, Mr. Berliner:

6  
7 JEFF ZYONTZ: Yes, that is certainly is the principal difference between the three versions  
8 of the bill, if you will, the first version being what was introduced, the second version being  
9 what the committee came down with and, now, this version is the responsibility would now  
10 be on the council by resolution.

11 The second thing that this ZTA would do relative to the committee's recommendations is it  
12 would delete the two additional criteria that they were talking about on requiring it to be in  
13 the CIP and requiring the acceptance in advance of acquisition.

14 Now that the council is in control of that, you can decide what you wish to decide as long  
15 as you're making the other findings.

16  
17 MIKE KNAPP: Okay.

18  
19 JEFF ZYONTZ: The third thing is that with respect to the mid-block pedestrian paths, it is  
20 identical to the committee's recommendations.

21  
22 MIKE KNAPP: Okay. I'm comfortable with this as a committee recommendation.

23  
24 MARC ELRICH: I'm not.

25 I agree with all but clause number 2.

26 It's on... where is it?

27 It's the one where we talked about what counts as the...

28  
29 MIKE KNAPP: Page 7 of the new proposal.

30 I think, line 29.

31 Is it that one?

32  
33 MARC ELRICH: Yeah.

34  
35 MIKE KNAPP: The proposed total interior...

36  
37 MARC ELRICH: Page 7, line 2.

38 I think Nancy's captured one of the issues that we really need to deal with.

39 I've walked into Jeff's office, apparently, I [INDISTINCT] into Jeff's office and I said, "Jeff,  
40 can we grab this authority back?"

41 And he said, "Funny thing, I'm already working on that and then that's what you would ask  
42 me for," and I think that makes a lot of sense in this process.

43 My stumbling block is number two here.



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1 I guess it's just not acceptable.

2 We can talk about it now or talk about it.

3  
4 MIKE KNAPP: Okay, let's put this, we've got two to one from a committee, let's put this on  
5 the table as the underlying issue and then we can make whatever modifications we need  
6 to from that to make sense.

7 And then the resolution that you had attached here, we have to introduce the following.

8 We have to go out at district councils, district tests, district council session to be able to  
9 introduce that, so, we'll come back and do that once we get through the ZTA and the  
10 SRA.

11 Okay, so before us, we have the substitute as proposed by Councilmember Floreen and  
12 the committee recommendation.

13  
14 ROGER BERLINER: Is it the amendments to the committee's as a motion or is it a...

15  
16 MIKE KNAPP: No.

17 It is a substitute to the committee's recommendation.

18  
19 ROGER BERLINER: So there would be an up or down vote on the substitute which would  
20 be the only vote that would take place, is that correct?

21  
22 JEFF ZYONTZ: If I may, I think you would need five votes to change the committee's  
23 recommendation.

24 and then if you have an amendment to that...

25  
26 ROGER BERLINER: No, my question is...

27  
28 MIKE KNAPP: Hold on.

29 Turn on your mic.

30 Parliamentary inquiry.

31  
32 ROGER BERLINER: Parliamentary inquiry.

33 My question is whether or not this is an amendment to the committee's recommendation  
34 such that those of us that believe that this is a step forward could indicate our support as a  
35 step forward without prejudice to whether or not we believe even as amended ultimately  
36 this is an appropriate course of action.

37 So my own desire would be as to whether or not there can be a division with respect to  
38 this matter such that this bill can perhaps get slightly better.

39  
40 MIKE KNAPP: This is the...

41  
42 GEORGE LEVENTHAL: Even if it was a substitute, you'd still have to have a vote on the  
43 underlying ZTA.





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1 So you could--if that's what you want to accomplish--...

2  
3 MIKE KNAPP: Right.

4  
5 GEORGE LEVENTHAL: You could approve it as a substitute, vote for it as a substitute,  
6 then the committee's recommendation is amended by the substitute, you still have a  
7 second vote because you still have to vote for the ZTA.

8  
9 ROGER BERLINER: That's my question.

10  
11 MIKE KNAPP: Okay, so we have before us the committee recommendation...

12  
13 JEFF ZYONTZ: Well, do you want to take a roll call on the substitute?

14  
15 ROGER BERLINER: Although I have another question for discussion...

16  
17 UNIDENTIFIED SPEAKER: [INDISTINCT].

18  
19 MIKE KNAPP: Right, so we just need a show of hands as to whether not...

20  
21 JEFF ZYONTZ: This is the substitute.

22  
23 MIKE KNAPP: This is the substitute.

24  
25 ROGER BERLINER: One of the underlying issues as I appreciate it is the distinction  
26 between public use space and public amenities?

27  
28 JEFF ZYONTZ: Yes.

29  
30 ROGER BERLINER: This language as I appreciate it only speaks of public use space.  
31 Is that correct?

32  
33 JEFF ZYONTZ: No.

34  
35 ROGER BERLINER: Okay, so tell me where...?  
36 Is this on line 58 through 65 on page 8?

37  
38 JEFF ZYONTZ: This would...

39  
40 ROGER BERLINER: What the council would then have to approve by resolution is my  
41 question. I see where the council, by resolution, I believe on line 48 on page 7 through  
42 57.



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1 NANCY FLOREEN: Eight?

2  
3 JEFF ZYONTZ: Yeah, it's...

4 What the council's resolution triggers is the executive's acceptance of this space.

5 The acceptance actually triggers that it satisfies the entire public use space and the entire  
6 amenities' space.

7 That is on line at 20-22, page 6.

8  
9 ROGER BERLINER: Say that again, it's on line?

10  
11 JEFF ZYONTZ: 20-22.

12 It is also in the footnotes on the table of oath.

13  
14 MALE ONE: Thank you.

15  
16 MIKE KNAPP: Okay, Councilmember, Leventhal?

17  
18 GEORGE LEVENTHAL: What I think this ZTA as amended does as it recognizes that art  
19 and entertainment uses a highly desirable uses that enliven communities and provide our  
20 constituents with the opportunities to go out and have fun.

21 And enjoy the grace and beauty that arts and entertainment bring in our lives.

22 And I just want to recollect that when Franklin Roosevelt became president, one of the  
23 first things he did was to push for the repeal of prohibition.

24 Now part of that was because...

25  
26 [Laughter]

27  
28 GEORGE LEVENTHAL: Part of that was because he wanted to...

29  
30 DUCHY TRACHTENBERG: This is a very interesting.

31  
32 GEORGE LEVENTHAL: Part of that was because he wanted to foster a new legal  
33 industry with all of the jobs and economic activity, but he also figured that a whole heck of  
34 a lot of Americans needed a drink.

35  
36 [Laughter]

37  
38 GEORGE LEVENTHAL: So, I think that with the council is trying to do today is good news  
39 in troubled times.

40 And I think, although this is a broad change to the zoning code with application to any  
41 CBD.

42 We know that it does make possible, a near, not final, but another step in the continued  
43 revitalization of Silver Spring.



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1 It will provide a very exiting and an important amenity right across the street from the AFI  
2 Silver Theater.

3 And it will fill a gap that our constituents in Silver Spring have long lamented.

4 So, I'm delighted that we're moving forward in this direction, and I am ready to rock and  
5 roll.

6  
7 [Laughter]

8  
9 MIKE KNAPP: Okay, so we have before us the substitute to get that on the table and then  
10 any amendments anyone may have for that.

11 Further discussion on the substitute as proposed.

12 All in support of this?

13 No, no that's good.

14 We'll get that on the table.

15 All in support of the substitute as proposed.

16 Indicate by raising your hand?

17 Councilmember Leventhal, Councilmember Ervin, Councilmember Berliner, Council Vice-  
18 President Andrews, [INDISTINCT] every body.

19 Councilmember Trachtenberg, Councilmember Floreen and myself

20 They are no opposed?

21 Now, comments on further discussion on that, Councilmember, Elrich.

22  
23 MARC ELRICH: George, I am as ready to rock and roll as you are.

24 I've a well established track record of that.

25 I tracked Bruce Springsteen's two concerts only a month ago.

26 So, I think I fully appreciate the value of what we are talking about here.

27 I guess, we have nightclubs, we've got music in Montgomery County and we've got arts in  
28 Montgomery County.

29 We have never had to go this far.

30 My problem with this legislation is that what is being touted as a new economic  
31 development tool looks like a traditional economic development tool or a tool that gets  
32 used all too often.

33 It reminds me of the situation of a sports team owner.

34 Who says, "Give me everything I want or I pull the team out of town."

35 Or factory owner who says, you know, cut your wages, cut your benefits or the jobs are  
36 going to go someplace else.

37 And what we've been told this; give the Lees, everything they want.

38 This is not about the Birchmere, this is not about Live Nation anymore.

39 This is about a zoning issue.

40 We've already dealt with the [INDISTINCT] issues.

41 This is about zoning.

42 I mean we have been told, give them everything they want or this project goes someplace  
43 else or it doesn't happen at all.



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1 And that's a problematic way, I think, to make decisions up here.  
2 To take out a pedestrian path because somebody doesn't want cut the footprint of their  
3 building.  
4 You know, we can write the law, so looks like it's a public safety decision.  
5 But that not the nexus that's around this decision.  
6 We can write this, I'm sure artful writers will make this not look like spot zoning.  
7 But, anybody who's been involved in the conversations knows this is pretty much spot  
8 zoning.  
9 So, there's--I think there are troubling underlying issues with this project.  
10 I thought the Lees--the concerns that are least are the legitimate.  
11 That, I would not put up something on the table and lose control over a piece of property  
12 and then not know what rules I was going to be forced to play under down the road.  
13 What fees this council might come up with.  
14 I guess, I mean, who knows what fees they might come up with in the future and who  
15 knows what rules might come up within the future.  
16 To me it is perfectly reasonable for the Lees to ask from protection from changing roles  
17 and a changing scenario.  
18 This legislation goes far beyond protecting the Lees from the changing rules and a  
19 changing scenario.  
20 But basically, it gives them a deal we would not give to any other developer in  
21 Montgomery County and if any other project came to us and looking like this.  
22 We would not be in the situation.  
23 Were it not for the fear that it would look like we killed live nation if we tell the Lees to go  
24 back to the table and work on this deal.  
25 I think there are a lot more council members who'd have reservations about doing this.  
26 But the fact of the matter is that nobody wants to take the chance to see who blinks first  
27 and to see whether that the council suggests any changes; those changes are going to be  
28 unacceptable and that this deal's off the table.  
29 And again, I'm not sure that's the best way for us to be dealing with this.  
30 We're going to accept this amendment which I admit is better than the executives' original  
31 proposal and better than some of the discussions we had in the committee.  
32 And I congratulate Nancy for capture--I think some of the really important concerns that  
33 we had.  
34 But it does things I don't think we should do  
35 This would be the only public use space in Montgomery County that is not a public use  
36 space.  
37 That you are going to have to pay to go into.  
38 That's a terrible precedent.  
39 It counts public use spaces also as amenity space.  
40 So, now, you have to double count.  
41 You get to say, it's the public use space and you get the same thing as an amenity space.  
42 I thought that was bad enough.  
43 But, now we get to count for the floor area of the project in order to make the 20%.



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1 Then, again, I think Nancy thing is more transparent and that's much better than the  
2 proposal from the other side that we count the floor planes of the building against the net  
3 lot area of the tract.

4 In order so we can claim we're meeting the 20% requirement.

5 This just says, we're going to accept the building and the gross floor area of the building  
6 without getting into any fancy language.

7 The problem is the Lee's aren't giving us the building or the floor area.

8 Its \$8 million of public money that's going to build the floor space that we are now going to  
9 count as the Lee's contribution through the 20% public use space requirement.

10 So, it's our money, our that we're going into count as their contribution and I find that  
11 unacceptable.

12 And, again I don't think we would do this in any other project.

13 I think Nancy is right to cut the council into this deal.

14 But, the other party that has been cut out of this thing, cut out of this deal is Park and  
15 Planning.

16 And, it's not enough for council members and the executives to say, "Oh, we don't trust  
17 what they might do to make a decision to cut the planning agency out of the planning  
18 process on this deal and I think it's legitimate for us to be sitting here but it's also  
19 legitimate for park and planning to have something to say about this project.

20 And I don't see the harm in doing that.

21 No, I have an amendment that I will offer and I expect fully to lose so, I'm not surprised.

22 But as I want to offer it for five, six, seven and eight...

23 I'll pass it down then I'll tell you what it says.

24  
25 ROGER BERLINER: Not at all I think it helps.

26  
27 MARC ELRICH: It's kind of helpful because, you know.

28  
29 MALE ONE: Yes.

30  
31 MIKE KNAPP: Here we go, how would we this to get down on them?

32  
33 MARC ELRICH: So, what I'm offering is a substitute for the line, for number 2 and I think  
34 inserts some new number 3.

35 I'm not really good on numbering things and this legislative process.

36 It takes up the gross floor area for the arts and entertainment use it would be at least 20%  
37 of that net lot area.

38  
39  
40 MIKE KNAPP: When you say number 2 the document that has been handed out, you are  
41 talking about...?

42  
43 MARC ELRICH: The places on page 7.



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1  
2 MIKE KNAPP: On line 29?

3  
4 MARC ELRICH: Line 29.

5  
6 MIKE KNAPP: Okay.

7  
8 MARC ELRICH: So, it removes the language about gross floor area which means it  
9 doesn't let you count, the County building as public use space.

10 At least as the Lee's contribution of public use space.

11 And it says the floor plate of the arts and entertainment should use, shall count towards  
12 the public use space requirement for the zone.

13 So, let's account--it's about public used space and amenity space.

14 I'll concede that they can get both on this one.

15 Number three says, the balance of public use space requirement for the zone, not  
16 satisfied or the arts and entertainment use maybe required for conformance with the  
17 Master Sector plan.

18 What this means is that if the Planning Board determines that they could use 6% of the  
19 remaining requirement which I think in this case is somewhere around 4200 square feet.

20 In order to make this project fit with the master plan or the sector plan that they can  
21 require the Lee's to give up 4200 square feet in order to achieve that purpose.

22 It's a minimal requirement on these slots with 7100 square feet.

23 It's a drop in the bucket.

24 If the Lee's we're to walk in tomorrow with the project they'll be losing 20% to start with.

25 The park and planning has testified more typically close to 30% and then the debt to  
26 provide the amenities on top of this.

27 This leads them do both as public used space and amenity and it caps total public use  
28 space to a lousy 20%.

29 And even it says the park and planning could only do this and if they find it and then  
30 formats of the Master Plan or the Sector Plan it doesn't give them the ability to be arbitrary  
31 to say we are going to collect the 6, we are going to collect the cash contribution for this  
32 because we can't use it here.

33 It does allow some flexibility if park and planning feels they need it for design.

34 So, that's my amendment.

35  
36 MIKE KNAPP: There are second for the amendment?

37  
38 ROGER BERLINER: Second.

39  
40 MIKE KNAPP: There is a second for the count, your Honor.

41 Is there any discussion on the amendment? Councilmember Floreen?



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1 NANCY FLOREEN: Thank you, I do appreciate Mark's concern about this we certainly  
2 talk about this in committee and I'd simply say that your comments I think are--a point of  
3 view here but really they are directed towards a resolution.

4 This is what we have before us is simply a mechanism that permits the council.

5 That's says the council under these criteria.

6 The council would determine by resolution that the County Executive accept the space for  
7 this purpose.

8 So, I think it's a generic zoning text amendment and I think your--it's really more of a  
9 technical observation.

10 I think the language that you're proposing to a certain degree at least the policy issues  
11 that you're advocating, are whether or not we should support the Fillmore Live Nation  
12 Project.

13 That, I think that decision I think is combined primarily to conversations on the resolution.

14 You can of course contain those requirements.

15 But the driving policy issues that you have and that drive your concern are not so much  
16 zoning text amendment, ones as whether or not given the power you choose to execute it.

17 And I think that is a very different kind of conversation.

18 I think, frankly, you know, we talked about this a lot in the committee.

19  
20 NANCY FLOREEN: Frankly, we, you know, we talked about this a lot in the committee.

21 We really need to give ourselves more tools, more flexibility.

22 You know, we talked a lot about a foreign-based zoning.

23 We have grand new ideas for how to--we're starting to develop them at least, for how to  
24 develop our different commercial areas.

25 And, you know, the challenge is always how much flexibility do you give, how much do  
26 you keep and what format do you do then.

27 And I think the Zoning Text Amendment issue that we have in front of us is really an  
28 overarching opportunity for us to define how we choose to execute our current power.

29 And that execution, as I said, in another action not in the Zoning Text Amendment that we  
30 have before us.

31 Now, one could argue the point that you want to limit the opportunities for the council to do  
32 that, but, in fact, conversations about live nation, I think, are better confined to the  
33 resolution because that's where we do get into it.

34 We do not get into it in the Zoning Text Amendment.

35 And, at least, I think the record should be clear about that.

36  
37 MIKE KNAPP: Councilmember Leventhal...

38  
39 GEORGE LEVENTHAL: There's merit to what Ms. Floreen says, but we know that the  
40 ZTA will apply to any arts or entertainment use. In a CBD that could it even meets the  
41 specific circumstances including the Fillmore.

42 So, I don't think it's completely out of order to discuss the Fillmore] understanding that it is  
43 a generic change to the zoning code that may affect future projects that apply to us.



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1 And in fact, the fact that future projects made do apply to us make it even more important  
2 that we legislate with care and that we look at this closely.

3 And so, with respect to the Fillmore, I think that it is important to recognize, and I think I'm  
4 quoting this correctly, that for a property that is not--that for a property that is donated  
5 now, the present value is more than 70% greater than property that would be given up ten  
6 years in the future.

7 Is that the statistic that staff cited in the memo?

8 So, the value of the amenity that is being given to us now is substantially greater than if an  
9 entire project were developed under optional method at some point in the future.

10 And I think that's a critical point to keep in mind when we're weighing the relative merits,  
11 which is what Mr. Elrich's amendment tries to do.

12 Of the various extractions that we make from a developer, Mr. Elrich, the fundamental  
13 point of his amendment which is sincerely intended and, you know, has a valid basis for it,  
14 is that we ought to be able to get more than this.

15 That the Lee's in the case of the Fillmore, which is only one potential application of the  
16 ZTA, that the Lee's are getting away with more than we, the county, ought reasonably to  
17 give them.

18 And I would only answer, in response to that, that the Lee's are giving the us more, giving  
19 the county more now than what otherwise in a normal course of business and the  
20 timeframe that the would ordinarily develop their site would occur.

21 And we get more benefit and it was estimated that 71%, I think, over ten years, is that the  
22 correct estimate?

23  
24 JEFF ZYONTZ: Yes, that's the difference between the present value.

25  
26 GEORGE LEVENTHAL: The present value of that property now is substantially greater  
27 than if we just shelved the whole thing and treated it like any other development, and the  
28 lease got around to building on their land when they felt like it, and the entire thing were  
29 treated as an optional method development at that future point.

30 So, I just wanted to make that point.

31 I do think this, obviously, the Fillmore project, one potential application of the ZTA is  
32 unusual, and it's mostly unusual for that reason.

33 We're getting the benefit right now, and the rest of the development will occur later, and  
34 there's real value associated with that which I think Mr. Elrich's well-intentioned  
35 amendment doesn't take fairly into account.

36  
37 MIKE KNAPP: Councilmember Elrich.

38  
39 MARC ELRICH: I think my amendment does take it into account by allowing it to count  
40 both as public use space and as amenity space, and by allowing it even to account as  
41 14% of the public use space even though it isn't public use space.

42 I mean, I fully recognize this as an unusual deal, but I think the council needs to think  
43 about the broader implications of this project on other areas.





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1 Because what we're saying now is in any other place in Montgomery county, if somebody  
2 hands us a building that has 20% of the net lot area in it, that's going to count as their  
3 public use space, their amenity and their entire public use space and public amenity  
4 requirement, we're going to lose the ability in any other place to look at this and say, "Do  
5 you really want to do this?"

6 It may be that in this project, well, we're not supposed to be that specific, but in this  
7 project, that that's possibly true.

8 But, are we certain that in all other projects and all the other CBD's, with Bethesda?

9 And if somebody gives us a, you know, five-story building with 4,000 square feet on each  
10 floor and says, "This is my 20% of my net lot area," that somehow, we want to abdicate  
11 any ability to look at, you know, the design, the public amenities, public use space and say  
12 that for this project, this is now good for all projects?

13 That doesn't make any sense, that's why it is--that's the essence of the problem here, this  
14 is being driven by one project.

15 And we're going to make some decisions that could come back to haunt us on other  
16 projects.

17  
18 MIKE KNAPP: I appreciate given the conversation on the committee, but I think, given the  
19 substitute that the council has just agreed to that Ms. Floreen brought forward, we actually  
20 retain the authority to make that finding in each specific project.

21 And so, we will have set—if other circumstances prevail, well, that we can make that  
22 finding in this instance, or we could, depending upon what the other circumstances are  
23 with other projects that come forward, we could then make different findings.

24 But at the end of the day, the council is making that determination; we're not abdicating  
25 that piece.

26 And so, I think that's a distinction relative to what we were with the ZTA before which I  
27 think makes it better than what we considered on, whatever day we considered it last  
28 week.

29  
30 MARC ELRICH: I guess, I would have been more comfortable if the language had said  
31 that, basically, we have the ability to accept what's offered to us as acceptable without  
32 going through the gyrations of saying it meets the 20% requirement and it meets the entire  
33 requirement for--that if you meet this, you meet the entire requirement for public use  
34 space and public open space.

35 I mean, I would have liked for the council to have retained more flexibility.

36 And I've said this on another issue.

37 I don't always think it's good to leave things to discretion for lack of better word.

38 Sometimes, you know, having rules and knowing you have to follow the rules is better  
39 than saying you guys can wing it and come up with your rationale as you do it.

40 I mean, much as it's empowering to be able to wing it, it's not always in the best public  
41 interest.



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1 MIKE KNAPP: Okay. Further discussion on the amendment as put forward by Mr. Elrich?  
2 I see none. Those in support of the amendment, indicate by raising your hand.  
3 Councilmember Berliner, Councilmember Elrich. Those opposed? Councilmember  
4 Leventhal, Councilmember Ervin, Councilmember Praisner, Councilmember  
5 Trachtenberg, Councilmember Floreen, Councilmember Andrews and myself. Further  
6 discussion or further amendments to the ZTA? Councilmember Berliner?

7  
8 ROGER BERLINER: Thank you, Council President .

9 I know it comes as no surprise to the county executive's team that has worked so hard  
10 with respect to this, that I will be voting "no."

11 I do think that this was a bad business deal with the Fillmore folks.

12 I think this is a bad precedent from land use perspective, and quite frankly, I think it's a  
13 poor use of our taxpayer dollars.

14 So, I'm not there on this, and I say that with greatest respect for the Silver Spring  
15 community who longs so much for something hot, some rock-and-roll, something very  
16 good on that particular corner.

17 It should have happened years ago, and I can understand why you believe that, by golly,  
18 despite everything that may be wrong with this, by golly, did I sound like anybody else?

19  
20 NANCY FLOREEN: You bet!

21  
22 ROGER BERLINER: You bet. All right. All right.

23  
24 MIKE KNAPP: All right.

25  
26 ROGER BERLINER: All right, all right, all right. I would say that I do believe that there  
27 would have been a better way to go about this.

28 I've shared this with the county executive's team that from my perspective, I would have  
29 said to the developer, I would have agreed to pay the developer the fair market value for  
30 that property.

31 And if the developer didn't want to sell, then, if this is such an important economic  
32 development tool, I would have done what the county does all the time when something is  
33 so important in an economic development tool.

34 I would have used the authority of eminent domain and acquire the property.

35 And the property, by all estimates, is something on the order of \$3.5 Million, and then I  
36 would have put it out for a competitive bid to say who can give us the best music  
37 entertainment center.

38 And I believe we would have gotten a better business deal, and we would not have had a  
39 bad land use precedent, and we would not have had to spend so much taxpayer dollars at  
40 such an inappropriate and difficult time.

41 So, I get the objective.

42 I get the objective, I get the desire, I understand the county executive's desire to continue  
43 to move forward in Silver Spring.



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1 And I get my colleagues who care deeply about Silver Spring and why they support this,  
2 and I have full respect for you and your advocacy on behalf of it, but I can't go there and  
3 so I will be voting "no."  
4

5 JEFF ZYONTZ: I only wanted to say one point with what you're about to vote on.  
6 The other change from the committee's recommendation is that the ZTA would take effect  
7 immediately.

8 So, that was a change from where the committee was; I would just want you to note that.  
9

10 MIKE KNAPP: Okay.  
11 Further discussion on the ZTA as amended?  
12 I'm seeing none.  
13 Madame clerk, if you would call the roll.  
14

15 CLERK: Mr. Elrich?

16  
17 MARC ELRICH: No.

18  
19 CLERK: Mr. Praisner?  
20

21 DONALD PRAISNER: Yes.  
22

23 CLERK: Ms. Trachtenberg?  
24

25 DUCHY TRACHTENBERG: Yes.  
26

27 CLERK: Ms. Floreen?  
28

29 NANCY FLOREEN: Yes.  
30

31 CLERK: Mr. Leventhal?  
32

33 GEORGE LEVENTHAL: Yes.  
34

35 CLERK: Ms. Ervin?  
36

37 VALERIE ERVIN: Yes.  
38

39 CLERK: Mr. Berliner?  
40

41 ROGER BERLINER: No.  
42

43 CLERK: Mr. Andrews?



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1  
2 PHIL ANDREWS: Yes.

3  
4 CLERK: Mr. Knapp?

5  
6 MIKE KNAPP: Yes. ZTA08-15 is approved, 7 to 2.

7 We now turn to action on Subdivision Regulation Amendment 08-03, Arts or  
8 Entertainment Use validity period.

9 Any discussion?

10 The PHED Committee's recommendations, this SRA, the committee recommended 3 to 0  
11 having the adequate public facilities validity period for a project with accepted arts or  
12 entertainment uses run from the date of the project plan approval and last for 18 years.  
13 And they also recommended deleting provisions for extending the APF validity period,  
14 that's what we have before us as the committee's recommendation.  
15 Is there a discussion, Councilmember Floreen?

16  
17 NANCY FLOREEN: Yes.

18 I would propose one amendment, is this necessarily an amendment, Jeff?

19 The committee recommended 18 years after the date of the preliminary plan approval.

20 That was a committee recommendation.

21 Just reading.

22  
23 JEFF ZYONTZ Yes. And I'm deleting all the other requirements.

24  
25 NANCY FLOREEN: And deleting everything else.

26 One thing has been proposed by the county executive, I'm just trying to coordinate this  
27 with what we'd looked at in committee.

28 The issue has to do with--one of the proposals that the committee did not support and I  
29 propose that we retain is the language that was on the bottom of circle three, that would  
30 extend the validity period for the duration of any government-imposed moratorium.

31 I should like to think that, that would never occur, but you never know around here.

32 And I think that's the only change.

33  
34 JEFF ZYONTZ: Now, this is the only change, it changes the numbering.

35  
36 NANCY FLOREEN: To the Subdivision Regulation.

37 So, I would propose that amendment.

38  
39 MIKE KNAPP: So, you're proposing to amend the committee recommendation?

40  
41 NANCY FLOREEN: In that regard.



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1 MIKE KNAPP: So, you have an amendment that extends the validity period.

2  
3 NANCY FLOREEN: It would simply say that if we were to impose a moratorium, it was in  
4 the...

5  
6 MIKE KNAPP: What line are you on? [INDISTINCT].

7  
8 NANCY FLOREEN: It's on circle three.

9  
10 DUCHY TRACHTENBERG: 47.

11  
12 NANCY FLOREEN: The agenda item 11 of the Subdivision Regulation Amendment that  
13 the county, the council PHED Committee had recommended. Here.

14  
15 MR. JEFF ZYONTZ: Council--Basically, your recommendation would retain the provision  
16 starting on line 47, on circle three of the committee's recommendations and going down to  
17 line 57?

18  
19 NANCY FLOREEN: That would reinsert that.

20  
21 MIKE KNAPP: All right, 47 to line 57 will be reinserted.

22  
23 NANCY FLOREEN: So that's my motion.

24  
25 MIKE KNAPP: Is there a second?

26  
27 GEORGE LEVENTHAL: Can I hear the motion restated?

28  
29 NANCY FLOREEN: The motion is to restate--to reinstate the language that the  
30 committee took out on line 47 through...

31  
32 DUCHY TRACHTENBERG: Fifty seven?

33  
34 MIKE KNAPP: Fifty-four.

35  
36 NANCY FLOREEN: Fifty-four. It's a modest change.

37  
38 MIKE KNAPP: A modest proposal.

39  
40 MIKE KNAPP: All right, there's no further question, further discussion? Is there a second?

41  
42 VALERIE ERVIN: I second.



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1 MIKE KNAPP: Second by Councilmember Ervin? Is there discussion Councilmember  
2 Elrich?

3  
4 MARC ELRICH: As I [INDISTINCT]

5  
6 MIKE KNAPP: Okay. Councilmember Ervin?

7  
8 VALERIE ERVIN: I'm not quite sure why we're going in this direction. So, I seconded the  
9 motion, so that Councilmember Floreen can explain herself again because I'm not quite  
10 sure what this is all about.

11  
12 NANCY FLOREEN: The--there was concern that there be opportunity for this project to  
13 have the flexibility that it wants as part of the--let me put it this way and...

14  
15 MIKE KNAPP: Okay.

16  
17 ROGER BERLINER: Try it again.

18  
19 NANCY FLOREEN: Economic development initiatives for Silver Spring and there may be  
20 other cases where there is a need for additional flexibility under unique circumstances.  
21 And this is just an additional protection in that regard.

22  
23 JEFF ZYONTZ: I can help. As proposed by the committee, the life of the APF little period  
24 would be simply be 18 years without all of the other conditions. One of the conditions that  
25 would extend it; that was in the original ZTA, that was introduced, would allow for a further  
26 life beyond 18 years if, in fact, part of those 18 years were interrupted by a government  
27 moratorium. So, the effect of Miss Floreen's recommendation would be to allow for  
28 extensions beyond--an automatic extension beyond 18 years if, in fact, there was a  
29 government moratorium that prevented them from building.

30  
31 MIKE KNAPP: Okay, is there further discussion on the amendment?

32  
33 GEORGE LEVENTHAL: I'm going to move to table the amendment if I can get a second.

34  
35 VALERIE ERVIN: I second.

36  
37  
38 MIKE KNAPP: All right, motion to table is not a debatable motion, right? Correct?

39  
40 UNIDENTIFIED SPEAKER: Right.

41  
42 MIKE KNAPP: So, we have a motion to table before us. All in support of the motion to  
43 table indicate by raising your hand. Councilmember Leventhal, Councilmember Ervin,



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1 Councilmember Berliner, Council Vice-President Andrews, Councilmember Praisner,  
2 Councilmember Trachtenberg, Councilmember Elrich. Those opposed, Councilmember  
3 Floreen and myself.

4 The motion to table is agreed to.

5 We now move back to any other potential discussion on the SRA, any other further  
6 amendments?

7  
8 MARC ELRICH: Yes.

9  
10 MIKE KNAPP: Councilmember Elrich.

11  
12 MARC ELRICH: During the committee meetings, the committee followed the advice of  
13 Chairman Hansen one time.

14 As Chairman Hansen said, if we were giving away the store, you might as well make  
15 these 18 years.

16 And that was the only time that the committee followed the advice of the chairman.

17 I would actually like to move, we substitute back in the original bill because the original bill  
18 was agreed to by the developer and by the county executive.

19 And therefore, it must have been acceptable to the people for whom everything is being  
20 done today.

21 And it does have a provision for the county to actually get money in the event that this  
22 thing gets delayed at a certain point.

23 And that it has trigger mechanisms that the developer found perfectly acceptable.

24 So, if the executive and the developer found the original bill perfectly acceptable, I think  
25 the council should actually also agree that the original bill is perfectly acceptable and  
26 change it.

27 This is just flat out; it means the county doesn't get the revenues that they otherwise  
28 would have gotten in the event that there are necessary delays.

29 It does contain the validity period that Nancy wanted to be in there to protect the  
30 developer for some further action on the part of the council that might result in a  
31 moratorium.

32  
33 And I think it's actually a better balance and the smart thing to do and I think the chairman,  
34 in giving us advice, and he could correct me if I'm wrong, it was being facetious and  
35 frustrated rather than offering his best judgment.

36 And I went along with it because I was totally disgusted and I didn't have a way to vote  
37 disgusted. So...

38  
39 MIKE KNAPP: Of the product. Generally...

40  
41 MARC ELRICH: I'm rather limited in my options, but I think the original bill, since it was  
42 acceptable to the developer and the executive, we should pass it.

43 Everybody would believe that it's not deal breaker, that it's a little bit better for the county.



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1 So, I move we substitute the original language.

2  
3 MIKE KNAPP: Is there a second?

4  
5 ROGER BERLINER: There is.

6  
7 NANCY FLOREEN: I second.

8  
9 MIKE KNAPP: Seconded by Council...

10  
11 ROGER BERLINER: I will allow... I'm glad to step down.

12  
13 VALERIE ERVIN: Is the original language the language that the committee had voted  
14 three to zero, to recommend to the full council?

15  
16 MARC ELRICH: No.

17  
18 VALERIE ERVIN: Okay.

19  
20 MARC ELRICH: We recommend 18 years.

21  
22 MIKE KNAPP: I may need a...

23  
24 MARC ELRICH: One of the [INDISTINCT]

25  
26 ROGER BERLINER: I'll step back and I'll take the second.

27  
28 NANCY FLOREEN: We don't have that link.

29  
30 MIKE KNAPP: Is there a discussion on the...?

31  
32 GEORGE LEVENTHAL: Would be helpful to council members if we could see the  
33 language that has now been moved and seconded.

34  
35 MARC ELRICH: It's here.

36  
37 MIKE KNAPP: It is in--it would be included in...

38  
39 MARC ELRICH: It's everything that's double-bracketed.

40  
41 NANCY FLOREEN: Right.

42  
43 MIKE KNAPP: If you'll look at the SRA, which page, Mr. Elrich?





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1  
2 MARC ELRICH: Starts on page 3.  
3  
4 MIKE KNAPP: Okay, starts on page circle 3...  
5  
6 MARC ELRICH: Circle three...  
7  
8 MIKE KNAPP: Beginning on line...?  
9  
10 GEORGE LEVENTHAL: Line fourteen.  
11  
12 MARC ELRICH: All right.  
13 The first change is line 10.  
14 So, the initial period is ten years.  
15  
16 JEFF ZYONTZ: It actually starts on circle two.  
17  
18 MIKE KNAPP: Circle two, line ten?  
19  
20 JEFF ZYONTZ: Line 15.  
21  
22 MIKE KNAPP: Line 15? Okay.  
23  
24 MARC ELRICH: Different thing you do? Okay.  
25  
26 NANCY FLOREEN: Yes. We'll look into that.  
27  
28 MIKE KNAPP: So...  
29  
30 JEFF ZYONTZ: Are you looking at the attachment?  
31  
32 MARC ELRICH: Today's... Hold on, hold on.  
33  
34 GEORGE LEVENTHAL: Yeah, I'm sorry.  
35 I have a handout which was handed to me by my grandma a little while ago.  
36  
37 MIKE KNAPP: And today's packet for Agenda Item #11?  
38  
39 NANCY FLOREEN: No, it's in the packet.  
40  
41 JEFF ZYONTZ: All right, if you're looking at what you were handed...  
42  
43 MARC ELRICH: Yes?



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1  
2 DUCHY TRACHTENBERG: It's the Agenda Item #11.

3  
4 MIKE KNAPP: Okay, let's get everybody on the same page.  
5 For Agenda Item #11, in today's packet, on page circle 2 beginning at line 15...

6  
7 JEFF ZYONTZ: Fifteen.  
8 Going down, well, it would include all of the--everything on circle 3 as well and it would  
9 end the double brackets at line 54 on circle 4.

10  
11 GEORGE LEVENTHAL: And so, the effectiveness is a five-year timeframe?

12  
13 MARC ELRICH: No, a 10-year timeframe.

14  
15 JEFF ZYONTZ: Ten year, plus a five-year extension, plus...  
16 Plus time in addition if there were a moratorium.

17  
18 MIKE KNAPP: Okay, I see--ten is inside bracket?

19  
20 MARC ELRICH: Right.

21  
22 NANCY FLOREEN: Right.

23  
24 MIKE KNAPP: So, for 10 years, they have this and then they get an additional five years if  
25 these conditions are met.

26  
27 MARC ELRICH: Which was what the Lee's originally agreed to.

28  
29 GEORGE LEVENTHAL: And the reasoning behind the committee is demand, Mr.  
30 President?

31 The reasoning behind the committee's decision to go to 18 years was what?

32  
33 JEFF ZYONTZ: Was--these conditions really are so relatively easy to meet.  
34 It's clear, just to give them the total amount of years.

35 The total here equals to 15 years, but it was from the date of the conveyance of the  
36 property.

37 So, if you go back to the date of the approval where most validity period starts from, it's 18  
38 years in total.

39  
40 GEORGE LEVENTHAL: And so, once suggestion...

41  
42 MARC ELRICH: [INDISTINCT]



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1 GEORGE LEVENTHAL: I heard you.

2 I heard you.

3 And so, once again, Mr. Elrich, your reason for preferring the original language to the  
4 committee's amendment which Mr. Zyontz just said is in force and affect the very same,  
5 why do you want to go back to the original language?

6 I know you already stated it.

7  
8 MARC ELRICH: Well, the original language had trigger points, a trigger criteria for  
9 whether or not you get an extension.

10 Which one of the purposes is try to move the development along, so it doesn't wait until  
11 the end of the validity period.

12 And the other thing, frankly, is in Part C, where the applicant makes a binding commitment  
13 to the county to make the contributions and compensation for potential loss of property tax  
14 revenues, an amount equal to \$2.00 per each square foot of the gross floor area.

15 It's--basically, it gets us some money in the event this things is unnecessarily delayed.

16 And if the developer found that acceptable, we ought to take it.

17 I mean, why are we walking away if somebody is offering to give us money in the event  
18 that circumstances warrant it?

19 This isn't--this wasn't done over their objection, so why not?

20 They were really just frustrated.

21 I mean, the chairman has advised to us, if we were giving away the store, go all the way.

22  
23 GEORGE LEVENTHAL: Okay, I hear you.

24 So, in effect--let me just state it simply, if I may.

25 So, in effect, what the original proposal, as submitted by the administration, thus, is it says  
26 that you get ten years right off the bat to develop your parcel.

27 Then an additional five if the arts and entertainment project is substantially underway, or  
28 the economy is in really bad shape and there lots of office vacancies, or the applicant,  
29 because of delays, agrees to pay extra to the county.

30 That's a plain English statement of the conditions that you're requiring.

31  
32 MARC ELRICH: Yeah.

33  
34 GEORGE LEVENTHAL: It's not you, it's what was originally sent over to us, but thank  
35 you.

36  
37 MIKE KNAPP: Further discussion, Councilmember Floreen?

38  
39 NANCY FLOREEN: Ah, yeah.

40 I'd like the opinion of the Chief Executive Officer on this.

41 That would be Mr. Firestine...

42  
43 MIKE KNAPP: Chief Administrative Officer.



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1  
2 NANCY FLOREEN: Chief Administrative Officer on this?

3  
4 MIKE KNAPP: Officer.

5 If the Chief Executive is not with us, he's on the way to China.

6  
7 NANCY FLOREEN: Nah...

8 On his way to China, really?

9  
10 TIM FIRESTINE: Ms. Floreen, is your question, do we support the original SRA we sent  
11 over?

12  
13 TIM FIRESTINE: The answer of that is, yes, we do support the SRA we sent over.

14  
15 NANCY FLOREEN: Okay.

16  
17 MIKE KNAPP: Okay.

18  
19 MIKE KNAPP: Okay, is there further discussion?

20 We have before us the amendment as proposed by Councilmember Elrich to reinstate the  
21 language from lines 15 to line 47.

22  
23 JEFF ZYONTZ: Well, it would affect the entire amendment, so there is double-bracketed  
24 things on line seven that would just go back to the original, as submitted.

25  
26 MARC ELRICH: Right.

27  
28 MIKE KNAPP: Okay, further discussion?

29 I'm seeing none.

30 All supporting the amendment indicate by raising your hand.

31 That is unanimous, what the nice thing to see.

32 Okay, further discussion on the SRA?

33 Okay, I see none.

34 We have before us...

35  
36 DUCHY TRACHTENBERG: Hurry up before anybody changes their mind.

37  
38 MIKE KNAPP: We have before us action on subdivision regulation 08-03 as amended and  
39 re-amended.

40 Madame Clerk, if you would call the roll.

41  
42 CLERK: Mr. Elrich?



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1 MARC ELRICH: Yes.

2  
3 CLERK: Mr. Praisner?

4  
5 DONALD PRAISNER: Yes.

6  
7 CLERK: Miss Trachtenberg?

8  
9 DUCHY TRACHTENBERG: Yes.

10  
11 CLERK: Miss Floreen?

12  
13 NANCY FLOREEN: Yes.

14  
15 CLERK: Mr. Leventhal?

16  
17 GEORGE LEVENTHAL: Yes.

18  
19 CLERK: Miss Ervin?

20  
21 MARC ELRICH: Yes.

22  
23 CLERK: Mr. Berliner?

24  
25 ROGER BERLINER: Yes.

26  
27 CLERK: Mr. Andrews?

28  
29 PHIL ANDREWS: Yes.

30  
31 CLERK: Mr. Knapp?

32  
33 MIKE KNAPP: Yes.

34 SRA 08-03 is approved unanimously. We now have--as introduced...

35 We now--an interesting way to get back there.

36 Okay.

37 We now have given our previous vote on this ZTA.

38 We also have to introduce another council that goes out of district sessions back into  
39 county council for the introduction of the resolution for the council's action.

40 We have a copy of it.

41  
42 NANCY FLOREEN: It's at the end.



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1 JEFF ZYONTZ: It was on the back of the...

2  
3 MIKE KNAPP: Right.

4  
5 JEFF ZYONTZ: ...amendments for 0815, to substitute the [INDISTINCT] for the council  
6 of... The amendment is the last two pages following page 11.

7 If the council introduces this, the rules would allow for the council to act on it next week.

8  
9 MIKE KNAPP: Right.

10 So, we have before us an introduction, as recommended by Councilmember Floreen,  
11 the recommendation of the County Executive to accept certain arts or entertainments  
12 space in the Silver Spring Arts and Entertainment District, we have that.

13 So that we now introduce that--what I would just like to where I get to the next step.

14 I just wanted to thank everybody for the records on this.

15 There's been a lot of conversation back-and-forth, Councilmember Floreen, over the past  
16 week, Councilmember Ervin of District 5, Councilmember Elrich, I think everyone has  
17 been very committed to try to get to a resolution.

18 I appreciate everyone's efforts in that regard.

19 We're not going to get full agreement on everything all the time, as a legislative body we  
20 shouldn't. but should make sure that we have a good working relationship and I think this  
21 is another example of people working very hard to try and get to a successful outcome I  
22 appreciate everyone's effort.

23 What I would like to do even though the council will not take final action on this resolution,  
24 I would like to get some sense of the council's intent by taking a straw vote to see if there  
25 any recommendations we need to modify, make between now and the time the Council  
26 comes back before for final action next week.

27 So, I want to see if there's any discussion on the resolution as introduced.

28 I don't see any other take the straw vote, just a show of hands to see kind of where we are  
29 on this one.

30 And then we'll come back for final action next week.

31 As a straw vote in support --of the resolution as introduced, indicate by raising your hand.

32 That is Leventhal, Ervin, Vice-President Andrews, Councilmember Praisner,  
33 Councilmember Trachtenberg, Councilmember Floreen and myself.

34 And those who oppose, at this point are Councilmember Berliner and Councilmember  
35 Elrich.

36 Okay, and again, that is a straw vote, we will come back for final action on this next week.

37 So there's still some time for some tweaking] on that.

38 Okay, Councilmember Ervin?

39  
40 VALERIE ERVIN: Now that we've done all the hard work; there are couple of things that I  
41 just like to say on the record.

42 For too many years most of us have either walked or driven by the old J.C. Penney  
43 building on Colesville Road, hoping that one day we could realize the renaissance in



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1 downtown Silver Spring with anchor tenants making Silver Spring an Arts and  
2 Entertainment destination.

3 Silver Spring is now in the midst of this renaissance.

4 The pioneers were AFI and Discovery.

5 The Sarbanes Transit Center, the Silver Spring Library, Silver Place, Veterans Plaza and  
6 the Civic building are all much needed assets that are currently being developed in Silver  
7 Spring.

8 Now, we must focus on a new destination for arts and entertainment which will serve as  
9 the capstone for this renaissance.

10 This renaissance is not only good for Silver Spring, but its good for the entire county.

11 What we are doing today will enable the apex of Silver Spring's renaissance to be realized  
12 and will serve as a guide post for the revitalization of Wheaton

13 We need to continue to develop innovative options that will prime the economic engines of  
14 local small businesses and our central business districts, and attract world class arts and  
15 entertainment venues for our residents.

16 Currently, the county has the opportunity to acquire land, at no cost to the taxpayer, to  
17 create a state of the art Music Hall.

18 The county will receive a public asset years before the project is ready to go forward and  
19 we will be able to start generating tax revenue much earlier than what otherwise be  
20 possible.

21 The proposed resolution by the district council and the ZTA and SRA proposed by the  
22 county executive together strikes the right balance by providing criteria that developers  
23 must meet to make a project like this work by ensuring the proposed Arts and  
24 Entertainment project would provide and enhance economic development, public use  
25 space and Arts and Entertainment opportunities that don't already exist.

26 At this moment in time we can step out in front as leaders to developer process, to spur  
27 economic development or we can stay wedded to antiquated rules and procedures that's  
28 stimey unique, cultural opportunities that our resident want and deserve.

29 I supported the ZTA and the SRA and the resolution because I choose to lead for Silver  
30 Spring and all of the Arts and Entertainment districts in the county.

31 And I would also like to thank very much my colleagues because this is not been an easy  
32 process for any of us.

33 We've been working on this for about a year and a half.

34 And to the Lee family and to the Filmore for all of your steadfast work to make this a  
35 reality, I thank you all very much; I think we've done the right thing here.

36 It doesn't look pretty and it hasn't been easy but and also thanks to the County Executive  
37 and his awesome team, you all have--you deserve much of the credit for this.

38 I'm glad we're moving down the road on this now.

39  
40 MIKE KNAPP: Councilmember Floreen?

41  
42 NANCY FLOREEN: Yes, and I want to add a special note of thanks to our staff.



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- 1 Jeff Zyontz has been a saint in helping us work through this along with the tremendous
- 2 help of Diane Schwartz Jones from the County Executive's Office.
- 3 They're a terrific team and we owe a great debt to them both.
- 4
- 5 MIKE KNAPP: Okay, with that we will be back for final action of resolution next week.
- 6 But at this point, the council stands adjourned.
- 7